

# City of Birmingham

COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER  
RECOVERY PROGRAM

## Procurement Policies and Procedures

CDBG-DR  
Procurement  
Policies and  
Procedures as of  
February 7, 2018

# Procurement

## Introduction

The Department adheres to the City of Birmingham's Purchasing procedures as laid out in its Purchasing Handbook for Departmental use prepared by the Department of Finance's Purchasing Division. The City has adopted the Procurement Standards at 2 CFR 200.317-326 in addition to its own procurement procedures as required by applicable State and local laws and regulations. Contracts awarded by the department shall comply with all policies and procedures as defined within this document.

In accordance with HUD's Section 3 program and City and State of Alabama purchasing requirements, the City shall take affirmative steps to ensure that small, disadvantaged and minority firms, women's business enterprises, and labor surplus firms are solicited whenever there are potential qualified sources. The City shall also consider the feasibility of dividing total requirements into small tasks or quantities as to permit maximum participation by small, disadvantaged and minority firms, women's business enterprises, and labor surplus firms. Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses.

All procurement carried out with CDBG-DR funds, where the City is a direct party, shall be carried out in a manner that provides maximum free and open competition. Procurement policies will not restrict or eliminate competition. The City shall not place unreasonable requirements on firms for them to qualify to do business. Nor will the City encourage or participate in noncompetitive practices among firms. The City is alert to organizational conflicts which would jeopardize the negotiation process and limit competition. The City will not require unnecessary experience or bonding requirements.

Pursuant to state law and federal regulations, all solicitations of offers shall incorporate a clear accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

All solicitation of offers shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.

Contracts shall be awarded only to responsible contractors/firms that demonstrate the potential ability to perform successfully under the terms and conditions of the proposed procurement.

Consideration is given to the lowest priced responsible bidder. If a contractor does not meet the required specifications, a contract will not be awarded regardless of financial resources and/or work history with the City.

## Methods of Procurement:

Direct procurement by the City shall be made by using one of the following methods depending on the type of service to be procured:

### Small Purchase Procedures:

Relatively simple, informal procurement procedures will be used for the purchase of materials, single task services, supplies, equipment, and/or other property when the purchase price falls below the Simplified Acquisition Threshold (48 CFR Subpart 2.1, 41 USC 1908). The purchaser must obtain a minimum of three oral or written price or rate quotations from qualified sources. Documentation on all quotations received (whether oral or written) shall be made a part of the file. Selections shall be made principally on price. Purchases that exceed \$10,000 must get prior approval from City Council and purchases that exceed \$15,000 must follow bid procedures. Payment shall be made upon delivery or completion of services.

### Competitive Sealed Bids/Formal Advertising:

Under this procedure bids are publicly advertised in accordance with the state's Public Bid Law. A firm fixed price contract (either lump sum or unit price) shall be awarded to the responsible bidder whose bid is lowest in price that conforms to all the material terms and conditions of the advertisement for bids.

Competitive sealed bids can be used ONLY when the following criteria are met: (1) there are complete, adequate, and realistic specifications or purchase descriptions; (2) there are two or more responsible bidders who are willing and able to compete effectively; (3) the procurement can be made on a firm fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.

When formal advertising is used the following conditions shall be met:

- i. The advertisement for bids shall be publicly advertised in accordance with state law;
- ii. The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items of service needed for the bidders to properly respond to the advertisement;
- iii. All bids shall be opened publicly at the time and place specified in the advertisement for bids;
- iv. A firm fixed-price contract award shall be made by written notice to the lowest responsible bidder whose bid conforms to the advertisement for bids. Where specified in the bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine low bid when prior experience indicates that such discounts are generally taken; and
- v. Notwithstanding the above, any or all bids may be rejected when there are sound documented business reasons in the best interest of the Disaster Recovery CDBG Program.

### Competitive Negotiation: Requests for Proposals/Qualification Statements:

All competitive proposals shall be conducted using a formal RFP/RFQ containing at least the minimum items in the attached RFP/RFQ Outline (See Attachment A). It is generally used when conditions are not appropriate for the use of sealed bids. Architectural and engineering services must be procured via requests for qualification (RFQ) statements. Other professional services may also be procured by requests for proposals. The following procedures will be used for competitive negotiation:

- i. Requests for proposals or qualification statements must be advertised in a newspaper in the nearest metropolitan area in accordance with the HUD rules for the program. All timely submissions will be honored and entered into the competition;

- ii. Request for proposals or qualification statements shall contain a detailed list of tasks in the proposed scope of work that is expected to be accomplished;
- iii. The request for proposals or qualification statements shall identify all significant evaluation factors or selection criteria, including the corresponding point system that will be used to rate the proposals/qualification statements. Requests for proposals shall always include cost and at least one non-cost evaluation factor:
- iv. The selecting official (or committee, if one is designated) shall review all proposals and statements received and make a technical evaluation of each. This shall also include a written statement that identifies the basis upon which the selection was made; including the importance of costs (for RFPs); and
- v. Contract award will be made to the responsible offeror whose submission is deemed most appropriate to the City with consideration for price, qualifications, and other factors set by the local governing body. Unsuccessful offerors will receive a formal letter returning their bid bond. Documentation of notification shall be maintained in the contract selection file for the individual project.

For qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, at least three firms will be solicited. Following the review of the qualification statements received, the most qualified competitor will be selected to enter into contract negotiation. This shall always include negotiation of price to insure cost reasonableness. At the conclusion of successful negotiation, the competitor shall be invited to enter into contract.

#### Noncompetitive Negotiation/Sole Source:

Noncompetitive negotiation shall be used when small purchase, formal advertising, or competitive negotiation procedures are not feasible. Noncompetitive negotiation will involve solicitations of a proposal from only one source. This can also occur if solicitations under the competitive negotiation procedures result in only one proposal or qualification statement. In order to qualify for this type of procurement, one of the following circumstances must apply:

- i. The item or service is available only from a single source;
- ii. It is determined that a public urgency or emergency exists by the Mayor's Office and the urgency will not permit the delay beyond the time needed to employ one of the other three methods of procurement; and
- iii. After solicitation of several sources, competition is determined to be inadequate.

#### Contract Price

Cost plus a percentage of cost and percentage of construction cost methods shall not be used. Per 2 CFR 200.323, the City shall perform cost or pricing analysis regarding every procurement action more than the Simplified Acquisition Threshold including contract modifications in accordance with HUD requirements. The method and degree of analysis is dependent on the facts surrounding the procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. Costs or prices based on estimated costs for CDBG-DR projects shall be allowed only to the extent that the costs incurred, or the cost estimates included in negotiated prices are consistent with federal cost principals detailed at 48 CFR Part 31. Lump sum prices will only be used when there is definable work product and the quantity to be provided is certain and the contractor

assumes all the risk for costs incurred. Unit prices can be used when there is a definable work product and the contractor assumes all the risk for costs incurred, but the quantity is estimated. Cost reimbursement will be used when the task does not result in a definable work product or the contractor will not assume the risk of incurring the cost to complete the task. Cost reimbursement, unit or lump sum price, or a combination thereof may be used as appropriate.

A cost reimbursement type contract is most appropriate when the scope and extent of the work to be performed are not clearly defined, such as a professional services contract. A cost reimbursement contract shall clearly establish a cost ceiling which may not be exceeded without formally amending the contract, and must identify a fixed dollar profit that may not be increased unless there is a contract amendment that increases the scope of the work.

A fixed price contract is appropriate when the scope of work is very well defined and product oriented. A fixed price contract can only be awarded when fair and reasonable prices can be established through adequate price competition and the solicitation is based principally on price. A fixed contract shall establish a guaranteed price that may not increase unless there is a contract amendment that increases the scope of the work.

## Procurement Records

The City shall maintain records sufficient to detail the history of the procurement. The records shall include the following contract provisions and conditions:

- i. Contracts other than small purchase shall contain provisions that allow for administrative, contractual, or legal remedies if contractors violate or breach contract terms, and provide for sanctions and penalties as appropriate;
- ii. All contracts more than \$10,000 shall provide termination for cause and for convenience by the City including the way it will be done and the basis for settlement;
- iii. All construction contracts and subcontracts more than \$10,000 shall include provisions which require compliance with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in DOL regulations (41 CFR Part 60);
- iv. All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back" Act (18 USC 874) as supplemented by DOL regulations (29 CFR Part 3);
- v. All contracts or subcontracts more than \$2,000 for construction or repair shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by DOL regulations (29 CFR Part 5);
- vi. All construction or repair contracts or subcontracts more than \$2,000, and more than \$2,500 for other contracts which involve the employment of mechanics or laborers, shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by DOL regulations (29 CFR Part 5);
- vii. All negotiated contracts shall include a provision that makes it possible for the HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, or papers, or records of the contractor/firm that are directly pertinent to the contract, for making audit examination excerpts and transcriptions. Further, the contract must include a provision that all required records will be maintained by the

- contractor/firm for a period of seven years after the City formally closes out each CDBG-DR program;
- viii. All contracts, subcontracts, and sub-grants in amounts more than \$100,000 shall contain a provision which requires compliance with the requirements of Section 306 of the Clean Air Act (42 USC 1857 h) Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
  - ix. Contracts shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State of Energy Conservation Plan issued in compliance with the Energy Policy Conservation Act (P.L. 94-163); and
  - x. All negotiated contracts shall include a provision for compliance with the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (H. B. 56) of the Alabama Legislature, and shall require the contractor firm to participate in E-Verify as required by that statute.

### Contract Administration

The City shall maintain contract administration systems that ensure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/firms will be a factor in subsequent contract negotiations and award. Remedial action by the City through legal processes shall be considered in instances of identified significant nonperformance.

All contracts will be developed in compliance with 570.503 (b) and will include clauses for Davis-Bacon labor standards and Duplication of Benefits.