

## **FEDERAL GRANTS PROCUREMENT POLICY AND CODE OF CONDUCT**

City of Pascagoula Community Development Department

Revised April 2023

This Procurement Policy complies with Federal Award Requirements, Federal Regulations at **24 CFR 85.36; CFR 200.318(a)-200.318(j)(2)** and applicable State and local laws.

### **GENERAL PROVISIONS**

#### **General**

The City shall provide for a procurement system of quality and integrity; provide for the fair and equitable treatment of all persons or firms involved in purchasing by the City; ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable prices available to the City; promote competition in contracting; and assure that City's purchasing actions are in full compliance with applicable federal standards, state and local laws.

#### **Application**

This Procurement Policy applies to all procurement actions of the City funded with federal grant funds. When both Federal and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, federal procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

#### **Definition**

The term "procurement," as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

#### **Changes in Laws and Regulations**

In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.

#### **Public Access to Procurement Information**

Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the Mississippi Freedom of Information Act.

### **ETHICS IN PUBLIC CONTRACTING**

#### **General**

The City hereby establishes this code of conduct regarding procurement issues and actions and shall implement a system of sanctions for violations. This code of conduct, etc., is consistent with applicable Federal, State and local laws.

**Conflicts of Interest/Standards of Conduct (*this section addresses requirements of 2 CFR 200.318*)**

No employee, officer, elected official, or agent of the City shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

1. An employee, officer, elected official, or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);
3. His/her partner; or
4. An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

**Gratuities, Kickbacks, and Use of Confidential Information**

No officer, employee, elected official, or agent shall ask for or accept gratuities, favors, or items of more than \$25 in value from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.

**Prohibition against Contingent Fees**

Contractors wanting to do business with the City must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

**Organization Conflicts (*2 CFR 200.318*)**

Organization conflicts of interest may exist when due to the City's relationship with a subsidiary, affiliated or parent organization that is a candidate for award of a contract in connection with federally funded activities, the City may be unable or appear to be unable to be impartial in conducting a procurement action involving a related organization. In the event of a potential organizational conflict, the potential conflict shall be reviewed by the City Manager or designee to determine whether it is likely that the City would be unable or appear to be unable to be impartial in making the award. If such likelihood exists, this shall not disqualify the related organization; however, the following measures shall be applied:

1. The organizational relationship shall be disclosed as part of any notices to potential contractors;
2. Any City employees or officials directly involved in the activities of the related organization are excluded from the selection and award process;
3. A competitive bid, quote or other basis of valuation is considered; and
4. The Governing Body has determined that contracting with the related organization is in the best interests of the program involved.

**Reporting**

Any perceived conflict of interest that is detected or suspected by any employee or third party shall be reported to the City Manager. If the City Manager is the subject of the perceived conflict of interest, the

employee or third party shall report the incident to the Mayor and/or City Council. If the Mayor and/or a council member is the subject of the perceived conflict of interest, the employee or third party shall report the incident to the City Manager, who shall report the incident to the Attorney General's office. The non-Federal entity must disclose in writing any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy. No reprisals or retaliation shall occur as a result of good faith reports of conflicts of interest.

### **Investigation**

Investigations based on reports of perceived violations of this policy shall comply with state and federal laws and regulations. No person sharing in the potential conflict of interest being investigated shall be involved in conducting the investigation or reviewing its results. In the event an investigation determines that a violation of this policy has occurred, the violation shall be reported to the federal awarding agency in accordance with that agency's policies.

### **Disciplinary Actions**

If an investigation results in a finding that the complaint is factual and constitutes a violation of this policy, the City shall take corrective action to ensure that such conduct ceases and will not recur. City staff shall document the corrective action taken and, when not prohibited by law, inform the complainant. Violations of this policy may result in disciplinary action up to and including discharge, fines and possible imprisonment. Disciplinary actions shall be consistent with city policies, procedures, applicable collective bargaining agreements and state and federal laws.

## **PROCUREMENT PLANNING**

In order to maintain and/or improve the procurement process, the City will periodically review its record of prior purchases, as well as future needs, to find patterns of procurement actions that could be performed more efficiently or economically, maximize competition and competitive pricing among contracts and decrease the City's procurement costs, reduce City administrative costs, ensure that supplies and services are obtained without any need for re-procurement (e.g., resolving bid protests), and minimize errors that occur when there is inadequate lead time. Consideration should be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

Prior to entering in to any procurement contract the City shall check the System for Award Management (SAM) to ensure that the City does not enter into a contract with any party that is excluded, disqualified, or otherwise ineligible to participate in federal procurement and nonprocurement programs per 24 CFR 570.609; 2 CFR 200.318(a)-200.318(j)(2).

## **PURCHASING METHODS**

### **Small Purchase Procedures**

For any amounts below \$100,000, the City may use small purchase procedures. Under small purchase procedures, the City shall obtain a reasonable number of quotes. To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotes may be obtained orally (either in person or by phone), by email, in writing, or through e-procurement. Award shall be made to the qualified vendor that provides the best value to the City. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file. The City shall not

break down requirements aggregating more than the small purchase threshold into several purchases that are less than the applicable threshold merely to: (1) permit use of the small purchase procedures or (2) avoid any requirements that apply to purchases that exceed the Micro Purchase threshold.

### **Sealed Bids**

Sealed bidding shall be used for all contracts that exceed the small purchase threshold and that are not competitive proposals or non-competitive proposals, as these terms are defined in this document. Under sealed bids, the City publicly solicits bids and awards a firm fixed-price contract (lump sum or unit price) to the responsible bidder whose bid, conforming with all the material terms and conditions of the Invitation for Bid (IFB), is the lowest in price. Sealed bidding is the preferred method for procuring construction, supply, and non-complex service contracts that are expected to exceed \$100,000.

- A. Conditions for Using Sealed Bids.** The City shall use the sealed bid method if the following conditions are present: a complete, adequate, and realistic statement of work, specification, or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the contract can be awarded based on a firm fixed price; and the selection of the successful bidder can be made principally on the lowest price.
- B. Solicitation and Receipt of Bids.** An IFB is issued which includes the specifications and all contractual terms and conditions applicable to the procurement, and a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the solicitation. The IFB must state the time and place for both receiving the bids and the public bid opening. All bids received will be date and time-stamped and stored unopened in a secure place until the public bid opening. A bidder may withdraw the bid at any time prior to the bid opening.
- C. Bid Opening and Award.** Bids shall be opened publicly. All bids received shall be recorded on an abstract (tabulation) of bids, and then made available for public inspection. If equal low bids are received from responsible bidders, selection shall be made by drawing lots or other similar random method. The method for doing this shall be stated in the IFB. If only one responsive bid is received from a responsible bidder, award shall not be made unless the price can be determined to be reasonable, based on a cost or price analysis.
- D. Mistakes in Bids.** Correction or withdrawal of bids may be permitted, where appropriate, before bid opening by written or telegraphic notice received in the office designated in the IFB prior to the time set for bid opening. After bid opening, corrections in bids may be permitted only if the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. A low bidder alleging a nonjudgmental mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document but the intended bid is unclear or the bidder submits convincing evidence that a mistake was made. All decisions to allow correction or withdrawal of a bid shall be supported by a written determination signed by the Contracting Officer. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall not be permitted.

## **Competitive Proposals**

Unlike sealed bidding, the competitive proposal method permits: consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the City, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

- A. Conditions for Use.** Where conditions are not appropriate for the use of sealed bidding, competitive proposals may be used. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold.
- B. Form of Solicitation.** Other than A/E services, competitive proposals shall be solicited through the issuance of a RFP. The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any subfactors and price. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The City may assign price a specific weight in the evaluation criteria or the City may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.
- C. Evaluation.** The proposals shall be evaluated only on the criteria stated in the RFP. Where not apparent from the evaluation criteria, the City shall establish an Evaluation Plan for each RFP. Generally, all RFPs shall be evaluated by an appropriately appointed Evaluation Committee. The Evaluation Committee shall be required to disclose any potential conflicts of interest. Documentation summarizing the results of the evaluation shall be prepared prior to award of a contract.
- D. Negotiations.** Negotiations shall be conducted with all offerors who submit a proposal determined to have a reasonable chance of being selected for award, unless it is determined that negotiations are not needed with any of the offerors. This determination is based on the relative score of the proposals as they are evaluated and rated in accordance with the technical and price factors specified in the RFP. These offerors shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their proposals. No offeror shall be given any information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. A common deadline shall be established for receipt of proposal revisions based on negotiations. Negotiations are exchanges (in either competitive or sole source environment) between the City and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions. Discussions are tailored to each offeror's

proposal, and shall be conducted by the contracting officer with each offeror within the competitive range. The primary object of discussions is to maximize the City's ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation. The contracting officer shall indicate to, or discuss with, each offeror still being considered for award, significant weaknesses, deficiencies, and other aspects of its proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposer's potential for award. The scope and extent of discussions are a matter of the contracting officer's judgment. The contracting officer may inform an offeror that its price is considered by the City to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the government's price analysis, market research, and other reviews have identified as reasonable. "Auctioning" (revealing one offeror's price in an attempt to get another offeror to lower their price) is prohibited.

- E. Award.** After evaluation of the revised proposals, if any, the contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the City provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
- F. A/E Services.** The City must contract for A/E services using Qualified Base Selection (QBS) procedures, utilizing a Request for Qualifications (RFQ). Sealed bidding shall not be used for A/E solicitations. Under QBS procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. QBS procedures shall not be used to purchase other types of services, though A/E firms are potential sources.

### **Noncompetitive Proposals**

- A. Conditions for Use.** Procurement by noncompetitive proposals (sole-source) may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, cooperative purchasing, or competitive proposals, and if one of the following applies:
  1. The item is available only from a single source, based on a good faith review of available sources;
  2. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the City. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency;
  3. The federal grantor authorizes the use of noncompetitive proposals; or
  4. After solicitation of a number of sources, competition is determined inadequate.
- B. Justification.** Each procurement using noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be approved in writing by the responsible Contracting Officer. The justification, to be included in the procurement file, should include the following information:

1. Description of the requirement;
2. History of prior purchases and their nature (competitive vs. noncompetitive);
3. The specific exception in 24 CFR 85.36(d)(4)(i)(A) through (D) which applies;
4. Statement as to the unique circumstances that require award by noncompetitive proposals;
5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
6. Statement as to efforts that will be taken in the future to promote competition for the requirement;
7. Signature by the Contracting Officer's supervisor (or someone above the level of the Contracting Officer); and
8. Price Reasonableness. The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

#### **Cooperative Purchasing/Intergovernmental Agreements**

The City may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The City may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.318(a)-200.318(j)(2).

#### **INDEPENDENT COST ESTIMATE**

An Independent Cost Estimate (ICE) is an estimate prepared by the City prior to obtaining offers. The degree of an analysis will depend on the size and complexity of the purchase. For all purchases the City shall prepare an Independent Cost Estimate prior to solicitation. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

#### **COST AND PRICE ANALYSIS**

The City shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

#### **Small Purchases**

A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If a reasonable number of quotes are not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer's personal knowledge at the time of purchase, comparison to the Independent Cost Estimate, or any other reasonable basis.

### **Sealed Bids**

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the Independent Cost Estimate, and where the City cannot reasonably determine price reasonableness, the City must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.

### **Competitive Proposals**

The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the City must compare the price with the Independent Cost Estimate. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the Independent Cost Estimate, the City must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.

### **Contract Modifications**

A cost analysis, consistent with federal guidelines, shall be conducted for all contract modifications for projects that were procured through Sealed Bids, Competitive Proposals, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$100,000.

## **SOLICITATION AND ADVERTISING**

### **Method of Solicitation**

- A. Small Purchases.** Quotes may be solicited orally, electronically, or by any other reasonable method.
  
- B. Sealed Bids and Competitive Proposals.** Solicitation must be done publicly. The City must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.
  - 1. Advertising in newspapers or other print mediums of local or general circulations.
  - 2. Advertising in various trade journals or publications.
  - 3. Electronic Bids. The City may conduct its public procurements through the Internet using secure interactive system for the submittal of bids. All electronic bids will be in



compliance with 24 CFR 85.36, State and local requirements, and the City's procurement policy.

**Time Frame**

For purchases of more than \$100,000, the public notice should run not less than once each week for two consecutive weeks.

**Form**

Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

**Time Period for Submission of Bids**

A minimum of 30 days shall generally be provided for preparation and submission of sealed bids and 15 days for competitive proposals.

**Cancellation of Solicitations**

- A. An IFB, RFP, or other solicitation may be cancelled before bids/offers are due if:
  - 1. The supplies, services or construction is no longer required;
  - 2. The funds are no longer available;
  - 3. Proposed amendments to the solicitation are of such magnitude that a new solicitation would be best; or
  - 4. Other similar reasons.
  
- B. A solicitation may be cancelled and all bids or proposals that have already been received may be rejected if:
  - 1. The supplies or services (including construction) are no longer required;
  - 2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
  - 3. All factors of significance to the City were not considered;
  - 4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  - 5. There is reason to believe that bids or proposals may not have been independently determined in open competition, may have been collusive, or may have been submitted in bad faith; or
  - 6. For good cause of a similar nature when it is in the best interest of the City.
  
- C. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request.

- D. A notice of cancellation shall be sent to all bidders/offerors solicited and, if appropriate, shall explain that they will be given an opportunity to compete on any resolicitation or future procurement of similar items.
- E. If all otherwise acceptable bids received in response to an IFB are at unreasonable prices an analysis should be conducted to see if there is a problem in either the specifications or the City's cost estimate. If both are determined adequate and if only one bid is received and the price is unreasonable, the Contracting Officer may cancel the solicitation and either
  - 1. Re-solicit using an RFP; or
  - 2. Complete the procurement by using the competitive proposal method. The Contracting Officer must determine, in writing, that such action is appropriate, must inform all bidders of the City's intent to negotiate, and must give each bidder a reasonable opportunity to negotiate.
- F. If problems are found with the specifications, the City should cancel the solicitation, revise the specifications and resolicit using an IFB.

## **BONDING REQUIREMENTS**

The standards under this section apply to construction contracts that exceed \$100,000. There are no bonding requirements for small purchases or for competitive proposals. The City may require bonds in these latter circumstances when deemed appropriate; however, non-construction contracts should generally not require bid bonds.

- A. Bid Bonds. For construction contracts exceeding \$100,000, offerors shall be required to submit a bid guarantee from each bidder equivalent to 5% of the bid price.
- B. Payment Bonds. For construction contracts exceeding \$100,000, the successful bidder shall furnish an assurance of completion. This assurance may be any one of the following four:
  - 1. A performance and payment bond in a penal sum of 100% of the contract price; or
  - 2. Separate performance and payment bonds, each for 50 % or more of the contract price; or
  - 3. A 20% cash escrow; or
  - 4. A 25 % irrevocable letter of credit.
- C. These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U.S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

## **CONTRACTOR QUALIFICATIONS AND DUTIES**

### **Contractor Responsibility**

The City shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- A. Have adequate financial resources to perform the contract, or the ability to obtain them;
- B. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- C. Have a satisfactory performance record;
- D. Have a satisfactory record of integrity and business ethics;
- E. Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- F. Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- G. Be registered in the System for Award Management (SAM) and be qualified and eligible to receive an award under applicable laws and regulations.

If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

### **Suspension and Debarment**

Contracts shall not be awarded to debarred, suspended, or ineligible contractors. The grants administrator will perform a review of potential contractors or individuals in the System for Award Management (SAM). Contractors must not be suspended, debarred, or determined to be ineligible in accordance with federal regulations (2 CFR 200.318(a)-200.318(j)(2). or by other Federal agencies, e.g., Dept of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings.

## **CONTRACT PRICING ARRANGEMENTS**

### **CONTRACT TYPES**

Any type of contract which is appropriate to the procurement and which will promote the best interests of the City may be used, provided the cost-plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used. All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the City. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.

### **Options**

Options for additional quantities or performance periods may be included in contracts, provided that:

- A. The option is contained in the solicitation;
- B. The option is a unilateral right of the Authority;
- C. The contract states a limit on the additional quantities and the overall term of the contract;
- D. The options are evaluated as part of the initial competition;

- E. The contract states the period within which the options may be exercised;
- F. The options may be exercised only at the price specified in or reasonably determinable from the contract; and
- G. The options may be exercised only if determined to be more advantageous to the City than conducting a new procurement.

## **CONTRACT PROVISIONS**

The contract provisions found in 2 CFR 200.318(a)-200.318(j)(2) shall be included in federal grant related procurement contracts entered into by the City.

## **CONTRACT ADMINISTRATION**

The City shall maintain a system of contract administration designed to ensure that contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in OMB Circular A-87, 24 CFR Par 85.36, 24CFR 85.40, 2 CFR 200.318.

## **SPECIFICATIONS**

### **General**

All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying City needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

### **Limitation**

The following types of specifications shall be avoided:

- A. Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);
- B. Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

## **APPEALS AND REMEDIES**

### **General**

It is City policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to federal grantors unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

### **Informal Appeals Procedure**

The City shall adopt an informal bid protest/appeal procedure for contracts of \$100,000 or less. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

### **Formal Appeals Procedure**

A formal appeals procedure shall be established for solicitations/contracts of more than \$100,000.

- A. Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- B. Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer's decision shall inform the contractor of its appeal rights to the next higher level of authority in the City.

## **ASSISTANCE TO SMALL AND OTHER BUSINESSES**

### **Required Efforts**

Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the City project are used when possible. Such efforts shall include, but shall not be limited to:

- A.** Including such firms, when qualified, on solicitation documentation;
- B.** Using the Mississippi Procurement Technical Assistance Program's online Agency Bid Bank by providing electronic notifications on the same date that the solicitation notice is submitted for publication, and ensuring that the notice contains the same information as that in the published notice;
- C.** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- D.** Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- E.** Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR Part 135 (so-called Section 3 businesses); and

- F. Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

Goals shall be established periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in City prime contracts and subcontracting opportunities.

### **Definitions**

1. A small business is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR Part 121 should be used to determine business size.
2. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
3. A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
4. A "Section 3 business concern" is a business that is 51% owned by a certified Section 3 eligible resident; or 30% or more of the business's full time employees are certified Section 3 residents or were Section 3 residents within their first three years of employment; or 25% or more of the subcontracts are awarded to certified Section 3 business concerns. 24 CFR Part 135
5. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

### **DOCUMENTATION**

The City must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not necessarily be limited to, the following:

- A. Rationale for the method of procurement (if not self-evident);
- B. Rationale of contract pricing arrangement (also if not self-evident);
- C. Reason for accepting or rejecting the bids or offers;
- D. Basis for the contract price (as prescribed in this handbook);
- E. A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- F. Basis for contract modifications; and
- G. Related contract administration actions.

The level of documentation should be commensurate with the value of the procurement. Records are to be retained for a period of three years after final payment and all matters pertaining to the contact are closed.

**DISPOSITION OF SURPLUS PROPERTY**

Property no longer necessary for the City's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

**FUNDING AVAILABILITY**

Before initiating any contract, the City shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.