



Administrative Policy Manual

Policy No: B-16

Date: 9-28-2018

Approved: Mark Acutt

SUBJECT: FEDERALLY FUNDED PURCHASING POLICY

In addition to Chapter 33 of the Indio Municipal Code, this policy shall apply to the awarding of contracts and sub-grants by the City that are funded, in part or in whole, by federal grants or funds pursuant 2 CFR Subtitle A, Chapter 2, Part 200, Subpart D, Sections 200.317-200.326.

I. **PURPOSE:** To establish policies and procedures for the procurement of supplies, equipment, and services stemming from federal aid.

A. This policy shall apply to the awarding of sub-grants and contracts by the City stemming from federal grants to the City. This section shall have the same application on the awarding of sub-grants and contracts by the City stemming from state, county or other non-federal government entity grants originating as federal grants.

B. **Procurement Standards.**

1. As a representative of the City of Indio, all employees are expected to conduct themselves in a professional and ethical manner, maintaining high standards of integrity and the use of good judgment. Employees are expected to be principled in their business interactions and act in good faith with individuals both inside and outside the City. The following "Code of Conduct" shall govern the performance, behavior and actions of the City, including employees, consultants or agents who are engaged in any aspect of procurement, including, but not limited to, purchasing goods and services, awarding contracts and grants, and the administration and supervision of contracts subject to this Policy:

a) No employee, officer or agent of the City shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

b) Conflicts of interest may arise when any employee, officer, or agent of the City, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a real or apparent financial or other interest in or a tangible personal benefit from a firm considered for the contract.

- c) The City's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Such a conflict shall not arise where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
 - d) The City shall not enter into a contract with a non-Federal entity that has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe, unless the non-Federal entity maintains written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean due to relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
 - e) Violations of this Code of Conduct could lead to disciplinary measures up to and including possible termination of employment.
2. The City shall avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economic purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
 3. The City shall consider entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.
 4. The City shall consider using Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
 5. The City shall consider using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure its essential function is provided at the overall lower cost.
 6. Contracts shall only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.
 7. The City shall maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, records of evaluation and negotiation, contractor selection or rejection and the basis for

the contract price. The City Clerk will be the repository for said records and shall be maintained for a period of no less than seven (7) years.

8. Time and material type contracts may be used only after a determination is made that no other contract is suitable. Time and material type contract means a contract where the cost to the City is the sum of the actual cost of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expense, and profit. Each time and material contract will set a ceiling price that the contractor exceeds at their own risk. A higher degree of oversight is required in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
9. The City alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes and claims. These standards do not relieve the City of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgment for that of the City unless the matter is primarily a federal concern. Violations of law will be referred to the local, state or federal authority having proper jurisdiction.

C. Procurement Standards.

1. The City will conduct procurement transactions in a manner providing full and open competition. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors developing or drafting specifications, requirements, statements of work, or invitations for bids or requests for proposals shall be excluded from competing for such procurements.
2. The City shall conduct procurements in a manner prohibiting the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
3. All solicitations will incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used to define the

performance or other salient requirements of procurement. In this case, at a minimum, three brands shall be listed that meet the required specifications. The specific features of the named brand which must be met by offerors shall be clearly stated. Notwithstanding, in some cases one brand name is only allowed with a public interest finding that the item is essential for synchronization with existing facilities.

4. Bids and proposals shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
5. The City shall ensure prequalified lists of persons, firms or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The City shall not preclude potential bidders from qualifying during the solicitation period.

D. Methods of Procurement to be Followed. The City shall use one of the following methods of procurement:

1. Procurement by Micro-Purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and adjusted periodically for inflation. To the extent practicable, the City must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the City considers the price to be reasonable. As of the date of this policy, the micro-purchase threshold is \$3,500.
2. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 and periodically adjusted for inflation. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. As of the date of this policy, the simplified acquisition threshold is \$150,000. For purchases exceeding seventy-five thousand (\$75,000), City Council approval is required.
3. Procurement by Sealed Bids (Formal Advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
 - a) For sealed bidding to be feasible, the following conditions should be present:
 - (1) A complete, adequate, and realistic specification or purchase description is available;

- (2) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (3) The procurement lends itself to a firm-fixed-price contract and the selection of the successful bidder can be made principally based on price.

b) If sealed bids are used, the following requirements apply:

- (1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
- (2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services for the bidder to properly respond;
- (3) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (4) A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (5) If there is a sound documented reason, any or all bids may be rejected.

4. Procurement by Competitive Proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a) Requests for proposals shall be publicized and identify all evaluation factors including relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- b) Proposals will be solicited from an adequate number of qualified sources;
- c) The City shall conduct technical evaluations of the proposal received and for selecting awardees, which may include, but not limited to: oral interviews, references, past performance, availability to perform work and certifications as determined by project scope.;
- d) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- e) The City may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified

competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances applies:
 - a) The item is available only from a single source;
 - b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in a written request from the City; or
 - d) After solicitation of multiple sources, competition is determined inadequate.
6. Contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms.
 - a) The City shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible.
 - b) Affirmative steps include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections 6.b.(1) through (6) of this section.
7. Contracts Cost and Price.
 - a) The City shall perform a cost or price analysis in every procurement action exceeding the simplified acquisition threshold, which is currently \$150,000,

including contract modifications. The method and degree of analysis will be dependent on the facts surrounding each procurement situation. As a starting point, the City shall make independent estimates before receiving bids or proposals.

- b) Profit shall be negotiated as a separate element of the price for each contract in which there is a no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work
 - c) Costs or prices based on estimated costs for contracts under the Federal award will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City under Subpart E – Cost Principles of Title 2, Subtitle A, Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).
 - d) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.
8. Federal Awarding Agency or Pass-Through Entity Review.
- a) The City shall make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for purchase.
 - b) The City shall make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposal or invitations for bids, or independent cost estimates when:
 - (1) The City's procurement procedures or operation fails to comply with the procurement standards of Title 2, Subtitle A, Part 200, Subsection 200.324;
 - (2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

- (5) A proposed modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
- c) The City may be exempted from the pre-procurement review in subsection 8.b. above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards set forth in Title 2, Subtitle A, Part 200.
 - d) The City may request that its procurement system be reviewed by the federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis
 - e) The City may self-certify its procurement system. Such self-certification must not limit the federal awarding agency's right to survey the system. Under a self-certification procedure, the federal awarding agency may rely on written assurances from the City that it is complying with these standards. The City must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.
9. Bonding Requirements. For construction of facility improvement projects exceeding the Simplified Acquisition Threshold, the City shall require bid guarantees, performance bonds, and payment bonds consistent with Title 2, Part 200, Section 200.325 of the Code of Federal Regulations.
10. Contract Provisions. The City's contracts shall contain the provisions in Appendix II to Title 2, Subtitle A, Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards, as applicable.