



Le Sueur County, MN

Tuesday, August 21, 2018

Board Meeting

Item 11

10:30 a.m. Darrell Pettis, County Administrator (5 min)

RE: Le Sueur County Procurement Policy

RE: City of Preston Request

RE: Justice Center Utility Easement - Woelfel lot

RE: Purchase Agreement with Charles Theis for CSAH 104

Staff Contact:



CITY OF PRESTON

P.O. Box 657, 210 Fillmore Street West
Preston, MN 55965

Telephone: 507-765-2153

Fax: 507-765-2794

July 25, 2018

Darrell Pettis
Le Sueur County Board
88 S Park Avenue
LeCenter, MN 56057

Mr. Pettis,

I'm very excited to share with you, and the Le Sueur County Board, that the first skilled nursing Veterans Home in Southeastern Minnesota is very close to becoming a reality. Preston was chosen as one of three sites across greater Minnesota for the construction of a new veterans home.

The construction costs for Veterans Homes are funded by a combination of local, state and federal funds. In May of this year, the Legislature and Governor allocated \$10.2 million in state bond funds for construction of this home. The City of Preston will purchase and donate the 15-acre site (\$210,000) and has pledged an additional \$360,000 in cash. Fillmore County has pledged \$350,000 in cash. While ongoing, to date individuals and organizations in the Preston area have pledged \$110,000 in cash. The federal government will match local and state contributions 2-1.

The facility design work will start in October and while our hope is to build a 72-bed home, the local contributions pledged in the next 5 weeks will dictate the size and amenities of the facility.

The City of Preston respectfully requests the Le Sueur County Board to consider a contribution to this project.

Why should Le Sueur County consider a contribution?

While this facility will be open to veterans from across Minnesota, our 2017 needs assessment estimates that 10% of the residents in this facility will come from the study's "tier 3" counties (Le Sueur, Rice, Goodhue and Wabasha).

How much should our County Board consider donating?

A number of Counties near to the other proposed veterans homes have pledged \$50,000 each to their respective projects.

When does our County Board need to make a decision?

The Minnesota Department of Veterans Affairs has requested the pledge commitments be made by August 31, 2018. The contributions will need to be received by the state no later than March 23, 2019. Contributions will be placed into a state-managed escrow fund. If your County intends to make a donation, please return the enclosed pledge card by Friday, August 24.

Please see the attached pledge card for additional information. Please direct questions relating to the project or the pledge to our City Administrator, Joe Hoffman, at (507) 765-2153 or jhoffman@prestonmn.org.

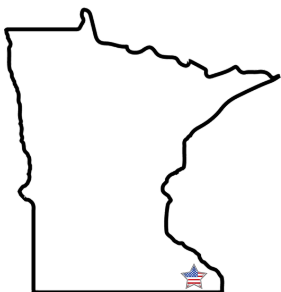
Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Kurt Reicks" followed by a vertical line and the initials "MB".

Kurt Reicks
Mayor

PRESTON VETERAN'S HOME



- ▶ 72-bed skilled nursing care facility – first and only in Southeastern Minnesota
- ▶ Proposed to serve 15 Counties in Southeastern Minnesota
- ▶ \$30+ million facility cost
- ▶ Many veterans left their communities behind to serve their country – having veterans homes in Greater Minnesota ensures our veterans don't again need to travel far from home to get the care they deserve.

Pledges are due by August 24, 2018.

County Name _____

Amount of Pledge \$_____

Funds to be deposited in State escrow account no later than March 23, 2019

Please send pledge card to: City of Preston, PO Box 657, Preston, MN 55965

Please contact Joe Hoffman, Preston City Administrator, with any questions about the project or your pledge. 507-765-2153 or jhoffman@prestonmn.org

2018 Minnesota Session Laws

Key: (1) language to be deleted (2) new language

CHAPTER 107--H.F.No. 3841

An act relating to local government; increasing the contract ranges in the Uniform Municipal Contracting Law; amending Minnesota Statutes 2016, section 471.345, subdivisions 3, 4.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2016, section 471.345, subdivision 3, is amended to read:

Subd. 3. **Contracts over ~~\$100,000~~ \$175,000.** If the amount of the contract is estimated to exceed ~~\$100,000~~ \$175,000, sealed bids shall be solicited by public notice in the manner and subject to the requirements of the law governing contracts by the particular municipality or class thereof. With regard to repairs and maintenance of ditches, the provisions of section 103E.705, subdivisions 5, 6, and 7, apply.

Sec. 2. Minnesota Statutes 2016, section 471.345, subdivision 4, is amended to read:

Subd. 4. **Contracts exceeding \$25,000 but not ~~\$100,000~~ \$175,000.** If the amount of the contract is estimated to exceed \$25,000 but not to exceed ~~\$100,000~~ \$175,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof.

Sec. 3. **EFFECTIVE DATE.** Sections 1 and 2 are effective August 1, 2018, and apply to contracts entered into on or after that date.

Presented to the governor April 26, 2018

Signed by the governor April 26, 2018, 11:13 a.m.

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Le Sueur County Federal Award Procurement Policy

Purpose

The Federal Office of Management and Budget (OMB) released new guidance on Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards in OMB 2 CFR 200.317 through 200.326. The new guidance for all Federal Grant Awards and additional funding will be implemented as of January 1, 2017.

Responsibilities for Persons Procuring Federal Awards

It is the responsibility of persons procuring Federal awards to ensure each type of procurement is following Federal policies and procedures and complies with OMB 2 CFR 200.317 through 200.326 as attached to this policy from the Code of Federal Regulations. It is also the responsibility of persons procuring Federal awards to follow applicable state and local laws and regulations that are more restrictive than the guidelines spelled out in the OMB 2 CFR 200.317 through 200.326, and as applicable to refer to and comply with the remainder of subpart D, which can be found online at:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=eb4197da3399f44aabc1b1e282acf0&mc=true&node=pt2.1.200&rgn=div5#sp2.1.200.d>

Le Sueur County Written Standards of Conduct for Federal Award Procurement

All procurements of property and services under a Federal award must follow Le Sueur County's written standards of conduct, as referenced from 2 CFR part 200 subpart D §200.318. Specifically, no employee, officer or agent may participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. A conflict of interest arises with the employee, officer, or agent, and 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 financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of Le Sueur County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

A conflict of interest also exists if Le Sueur County has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe, and Le Sueur County is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

Methods of Procurements under a federal Award [§200.320]

1. Micro-Purchases: Acquisition of supplies and services less than \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act).
 - a. No quotations needed if the price is reasonable
 - b. Equitable distributions among qualified suppliers
2. Small Purchases: Relatively simple and informal procurement methods for services, supplies or other property that is up to \$175,000.

- a. Price or rate quotations must be obtained from an adequate number of qualified sources.
- 3. Sealed Bids (formal advertising): more than \$175,000. Le Sueur County will use the lesser of the 175,000 minimum indicated in Minnesota Statute 471.345 and the \$150,000 minimum prescribed in the Federal Acquisition Regulations. Publicly solicited and a firm fixed price contract is awarded the bid that is the lowest price. The sealed bid method is the preferred method for procuring construction, if the conditions in §200.320 paragraph C (1) apply.
 - a. In order for sealed bidding to be feasible, the following conditions should be present:
 - i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - b. If sealed bids are used, the following requirements apply:
 - i. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, the invitation for bids must be publicly advertised;
 - ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - iii. All bids will be opened at the time and place prescribed in the invitation for bids, the bids must be opened publicly;
 - iv. 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 must 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
 - v. Any or all bids may be rejected if there is a sound documented reason.
- 4. Competitive Proposals: More than \$175,000. 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. 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 must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - b. Proposals must be solicited from an adequate number of qualified sources;
 - c. The County must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

- e. The County 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. Non-Competitive Proposals: Procurement through solicitation of a proposal from only one source. May only be used when one or more of the circumstances apply:
 - 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 response to a written request from Le Sueur County; or d. After solicitation of a number of sources, competition is determined inadequate.

General Standards for Procurements

When procuring property and services, the following procurement standards must be followed as referenced from §200.318:

1. Ensure contractors are performing in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Contracts should only be awarded to responsible contractors who have the ability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
2. To reduce costs, the use of value engineering clauses is encouraged for large projects, such as construction. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
3. Consideration and analysis should be made to make the most economical approach of procurements. Avoid acquisition of unnecessary or duplicative items, and analyze the value of a lease versus purchase when applicable, or any other purchases for that matter. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
4. Le Sueur County is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate, or use of common or shared goods and services to promote a cost-effective use of shared services. Also, the use of Federal excess and surplus property in lieu of purchasing new is encouraged whenever feasible.
5. The following records must be maintained to detail the history of the procurement: reason for the method of procurement, selection of contract type, contractor selection or rejection, and basis for contract price.
6. Time and material type contract may be used only after it is determined there is no other suitable contract and if the contract includes a ceiling price that the contractor exceeds at its own risk. If this contract is used, a high degree of oversight is required to ensure the contractor is using efficient methods and effective cost controls.

7. Le Sueur County is responsible for the settlement of all contractual and administrative issues arising out of procurements, which include, but are not limited to: source evaluation, protest, disputes and claims.

Competition

Le Sueur County must engage in full and open competition for all procurement transactions consistent with the standards as referenced from §200.319. Records that sufficiently detail the history of all procurements, including small purchases, must be kept on file.

Contractors that draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for procurements. Some other examples of situations include but are not limited to:

1. Placing unreasonable requirements on firms for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices and contracts;
4. Organizational conflicts of interest;
5. Specifying only a "brand name" instead of allowing "an equal" product to be offered; and
6. Any arbitrary action in the procurement process.

In addition, Le Sueur County must conduct procurement in a manner that prohibits the use of statutorily or administratively imposed state, local or tribal geographical preferences in the valuation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preferences, or for state licensing law. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract [§200.319].

Le Sueur County must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus firms are used when possible [§200.321]. A list of persons, firms, or products which are used in acquiring goods and services must be kept current and include enough sources to ensure open and free competition.

All procurements under a Federal award must ensure that all solicitations have the following:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. Detailed product specifications should be avoided if at all possible.
2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Procurements of Recovered Materials

Le Sueur County must comply with section 6002 of the Solid Waste Disposal Act as referenced from §200.322.

Contract Cost and Price

As referenced from §200.323; refer for a detailed explanation of this requirement.

1. Every procurement action in excess of the \$175,000 threshold, including contract modification, must have a cost or price analysis. As a starting point, the County must make independent estimates before receiving bids or proposals.
2. Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.
3. For information on costs or prices based on estimated costs for contracts, please refer to CFR 2 subpart E which defines cost principles or Polk County purchasing policy.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Federal Awarding Agency or Pass-Through Entity Review

Le Sueur County must make available, upon request from the Federal awarding agency or pass-through entity, technical specifications, pre-procurement review, and all other documents related to proposed procurements, as referenced in §200.324.

Bonding Requirements

Le Sueur County will follow Minnesota Statute 574.26 for bonding requirements on construction or facility improvement contracts or subcontracts exceeding our \$175,000 Simplified Acquisition Threshold, which is more restrictive than the Uniform Federal Guidance.

Contract Provisions

Follow provisions as described in Appendix II to Part 200-Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

1. Contracts for more than the simplified acquisition threshold currently set at \$175,000 for Le Sueur County, (Le Sueur County will use the lesser of the 175,000 minimum indicated in Minnesota Statute 471.345 and the \$150,000 minimum prescribed in the Federal Acquisition Regulations), must address administrative contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the County including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under 41CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41CFR Part 60-1.3 must include the equal opportunity clause provided under 41CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by Le Sueur County must

include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. Le Sueur County must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. Le Sueur County must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Le Sueur County must report all suspected or reported violations to the Federal awarding agency.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by Le Sueur County in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires Le Sueur County to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be

reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Camp., p. 189) and 12689 (3 CFR part 1989 Camp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
9. Byrd Anti-Lobbying Amendment (31U.S.C. 1352)-Contractors that apply or bid for an award exceeding \$175,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Le Sueur County award.
10. See §200.322 Procurement of recovered materials.

200.322: Le Sueur County must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Le Sueur County and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by: (a) Checking SAM Exclusions; or

(b) Collecting a certification from that person; or

(c) Adding a clause or condition to the covered transaction with that person.

Approved by the Le Sueur County Board of Commissioners on _____, 2018.

Le Sueur County Board Chair

Le Sueur County Administrator

Code of Federal Regulations

Title 2 - Grants and Agreements

Volume: 1

Date: 2014-01-01

Original Date: 2014-01-01

Title: Section 200.317 - Procurements by states.

Context: Title 2 - Grants and Agreements. Subtitle A - Office of Management and Budget Guidance for Grants and Agreements. CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE. - Reserved. PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS. Subpart D - Post Federal Award Requirements. - Procurement Standards.

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions.

§ 200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, 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 financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of 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.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use 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 that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only 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.

(i) The non-Federal entity must 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, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must 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 non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

Code of Federal Regulations

Title 2 - Grants and Agreements

Volume: 1

Date: 2014-01-01

Original Date: 2014-01-01

Title: Section 200.319 - Competition.

Context: Title 2 - Grants and Agreements, Subtitle A - Office of Management and Budget Guidance for Grants and Agreements, CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE, - Reserved, PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS, Subpart D - Post Federal Award Requirements, - Procurement Standards.

§ 200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed 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 criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must 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 if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

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Title: Section 200.320 - Methods of procurement to be followed.

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§ 200.320

Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) 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. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) 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 with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

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

(i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(iv) 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 must 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

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) 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:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity 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.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. 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 apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

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Title: Section 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

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§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (a) The non-Federal entity must 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 must 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 paragraphs (1) through (5) of this section.

§ 200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.323 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is 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 are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

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Title: Section 200.324 - Federal awarding agency or pass-through entity review.

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§ 200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must 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 acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(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 contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity 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;

(2) The non-Federal entity 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 non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Performance and Financial Monitoring and Reporting