Procedure 7400P2-Procedure(1): Procurement Methods Under a Federal Award

Status: DRAFT - Errata Revision

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This procedure shall apply to purchases with federal funds not solicited through a sealed bid process.

SECTION 1. COMPETITIVE PROPOSALS

1.1 The technique of competitive proposals is normally conducted when more than one (1) source submits an offer, and either a fixed price or cost-reimbursement type contract is to be 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:

1.1.1 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;

1.1.2 The District must have a written method for conducting technical evaluations of the proposals received and making selections.

1.1.3 Proposals must be solicited from an adequate number of qualified sources; and

1.1.4 Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

1.2 The Caldwell School District 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. This 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.

SECTION 2. CONTRACT/PRICE ANALYSIS

2.1 The District performs a cost or price analysis in connection with every procurement action in excess of one hundred-fifty thousand dollars ($150,000), including contract modifications. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

2.2 The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the District Superintendent/Designee must come to an independent estimate prior to receiving bids or proposals. ~~2 C.F.R. § 200.323(a)~~.

2.3 When performing a cost analysis, the District Superintendent/Designee negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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.

SECTION 3. NONCOMPETITIVE PROPOSALS (SOLE SOURCE)

3.1 Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (1) source and may be used only when one (1) or more of the following circumstances apply:

3.1.1 The item is available only from a single source;

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

3.1.3 The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or

3.1.4 After solicitation of a number of sources, competition is determined inadequate.

3.2 A cost or price analysis will be performed for noncompetitive proposals when the price exceeds fifty thousand ($50,000). ~~one-hundred-fifty thousand dollars ($150,000)~~.

SECTION 4. FULL AND OPEN COMPETITION

4.1 All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or 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:

4.1.1 Placing unreasonable requirements on firms in order for them to qualify to do business;

4.1.2 Requiring unnecessary experience and excessive bonding;

4.1.3 Noncompetitive pricing practices between firms or between affiliated companies;

4.1.4 Noncompetitive contracts to consultants who are on retainer contracts;

4.1.5 Organizational conflicts of interest;

4.1.6 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

4.1.7 Any arbitrary action in the procurement process.

CFR - Code of Federal Regulations References	Description
2 CFR § 200.317	Procurements by States
2 CFR § 200.319	General Procurement Standards - Competition
2 CFR § 200.323(a)	Contract Cost and Price

Cross References	Description
7400	Procurement Management System