

ST. TAMMANY PARISH COUNCIL.

RESOLUTION

RESOLUTION COUNCIL SERIES NO. C-2553

COUNCIL SPONSOR: BINDER/DAVIS

PROVIDED BY: FINANCE

RESOLUTION TO ESTABLISH PROCUREMENT PROCEDURES RELATIVE TO THE STATE OF LOUISIANA COMMUNITY DEVELOPMENT BLOCK GRANT ("LCDBG") DISASTER RECOVERY PROGRAM.

WHEREAS, St. Tammany Parish Government ("Parish") has been afforded the opportunity to participate in the LCDBG Disaster Recovery Program administered by the Division of Administration ("State"); and

WHEREAS, the State requires the establishment of uniform procedures in compliance with OMB Circular A-102;

NOW, THEREFORE, BE IT RESOLVED that the attached policy entitled "Procurement Procedures of St. Tammany Parish Government Relative to the LCDBG Program" dated December 17, 2008 is hereby adopted.

THIS RESOLUTION HAVING BEEN SUBMITTED TO A VOTE, THE VOTE THEREON WAS AS FOLLOWS:

MOVED FOR ADOPTION BY _____, SECONDED BY _____

YEAS:

NAYS:

ABSTAIN:

ABSENT:

THIS RESOLUTION WAS DECLARED ADOPTED ON THE ____ DAY OF _____, 2009 AT A REGULAR MEETING OF THE PARISH COUNCIL, A QUORUM OF THE MEMBERS BEING PRESENT AND VOTING.

JERRY BINDER, COUNCIL CHAIRMAN

ATTEST:

THERESA L. FORD, COUNCIL CLERK

ST. TAMMANY PARISH GOVERNMENT

PROCUREMENT POLICY

These procedures are intended to serve as guidelines for the procurement of supplies, equipment, construction services and professional services for the LCDBG Program. These guidelines meet the standards established in 24 CFR 85.36 and State requirements.

CODE OF CONDUCT

No employee, officer, or agent of Parish ("Parish") shall participate in the selection or in the award or administration of a contract supported by LCDBG funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for award.

No officer, employee or agent of the Parish shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to subagreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

Any alleged violations of these standards of conduct shall be referred to the Parish Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

PROCUREMENT PROCEDURES

The director or supervisor of each department or agency of the Parish responsible for procurement of services, supplies, equipment or construction obtained with LCDBG funds shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the Director or Supervisor, an analysis to determine which approach would be the most economical shall be undertaken.

The Parish shall take affirmative steps to assure that small and minority firms, women's business enterprises, and labor surplus firms are solicited whenever they are potential qualified sources. The Parish shall also consider the feasibility of dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority firms, women's business enterprises, and labor surplus firms. Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses.

The Parish shall assist the prime contractor whenever possible by providing copies of lists which identify qualified small and minority firms, women's business enterprises, and labor surplus area firms.

SELECTION PROCEDURES

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

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

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

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

Consideration shall be given to such factors as contractor's/firm's capacity, integrity, compliance with public policy, record of past performance, and financial and technical resources.

METHOD OF PROCUREMENT

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

Small Purchase Procedures. Relatively simple, informal procurement procedures will be used where the purchase of materials, supplies, equipment, and/or other property will not cost in the aggregate more than \$20,000, and for construction with a cost of less than \$100,000, except where further limited by State law or LCDBG policy. The small purchase procedure can also be utilized to procure administrative consulting and other professional services costing less than \$100,000. The only exception to professional services is for architectural/engineering services that must be procured through competitive negotiation. The procurement officer must obtain a minimum of three oral or written price or rate quotations from qualified sources. Documentation on all quotations received (whether oral or written) shall be made a part of the file.

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

Competitive sealed bids can be used ONLY when the following criteria are met: (1) there are complete, adequate, and realistic specifications or purchase descriptions; (2) there are two or more

responsible bidders who are willing and able to compete effectively; and (3) the procurement can be made on a firm fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.

When formal advertising is used, the following conditions shall be met.

1. The advertisement for bids shall be publicly advertised in accord with State Law.
2. The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the advertisement.
3. All bids shall be opened publicly at the time and place specified in the advertisement for bids.
4. A firm fixed-price contract award shall be made by written notice to the lowest responsible bidder whose bid conforms to the advertisement for bids. Where specified in the bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine low bid when prior experience indicates that such discounts are generally taken.
5. Notwithstanding the above, any or all bids may be rejected when there are sound documented business reasons in the best interest of the LCDBG Program.

Competitive Negotiation: Requests for Proposals/Qualification Statements. This method may be used when formal advertising is not appropriate. Architectural and engineering services must be procured via requests for qualification statements; administrative consulting services must be procured via requests for proposals. Other professional services may also be procured by requests for proposals. The following procedures will be used for competitive negotiation:

1. Requests for proposals or qualification statements must be advertised in a newspaper in the nearest metropolitan area in accordance with the rules of the State's LCDBG Program. All submittals will be honored and entered into the competition.
2. The package for proposals or qualification statements shall identify all significant evaluation factors or selection criteria, including the corresponding point system that will be used to rate the proposals /qualification statements.
3. The selecting official (or committee, if one is designated) shall review all proposals and statements received and make a technical evaluation of each. This shall also include a written statement that identifies the basis upon which the selection was made.
4. Contract award will be made to the responsible offerer whose submission is deemed most appropriate to the Parish with consideration for price, qualifications, and other factors set by the local governing body.

Unsuccessful offerers shall be notified in writing within ten working days of contract award. Documentation of notification shall be maintained in the contract selection file for the individual project.

5. Following the review of the qualification statements received, the most qualified competitor will be selected to enter into contract negotiation. This shall always include negotiation of price to insure cost reasonableness. At the conclusion of successful negotiation, the competitor shall be invited to enter into a contract.

Non-Competitive Negotiations/Sole Source. Noncompetitive negotiation shall be used when small purchase, formal advertising, or competitive negotiation procedures are not feasible. Noncompetitive negotiations will involve solicitations of a proposal from only one source. This can also occur if solicitations under the competitive negotiation procedures result in only one proposal or qualification statement. Noncompetitive negotiation shall only be used when written authorization has been obtained from the State's Office of Community Development, with the one exception noted. In order to qualify for this type of procurement, one of the following circumstances must apply:

1. The item or service is available only from a single source;
2. It is determined that a public urgency or emergency exists and the urgency will not permit the delay beyond the time needed to employ one of the other three methods of procurement.
3. After solicitation of a number of sources, competition is determined to be inadequate.

The one exception to this method is that the non-competitive negotiation method may be used, without written authorization from the State, when an area wide planning agency or regional planning and development district is utilized for administrative consulting services.

CONTRACT PRICING

Cost plus percentage of cost and percentage of construction cost methods of contracting MUST NOT be used. The Parish shall perform cost or pricing analysis in connection with EVERY procurement action including contract modifications. Costs or prices based on estimated costs for LCDBG projects shall be allowed only to the extent that the costs incurred or the cost estimates included in negotiated prices are consistent with federal cost principles. Cost reimbursement, fixed price, per diem contracts, or a combination thereof may be utilized as appropriate.

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

A fixed price contract is appropriate when the scope of work is very well defined and product oriented. A fixed price contract MUST establish a guaranteed price which may not increase unless there is a contract amendment that increases the scope to the work.

A per diem contract expected to exceed \$10,000 will not be considered unless the Parish has determined that a cost reimbursable or fixed price contract is not appropriate. Cost and profit included in the per diem rate MUST be specifically negotiated and shown separately in the proposal. The contract must clearly establish a ceiling price that may not be exceeded without formally amending the contract.

The Parish may use a multiplier type of compensation under either the cost reimbursement or fixed price contract. The multiplier and the portions of the multiplier applicable to overhead and profit must be specifically negotiated and separately identified in the contract.

PROCUREMENT RECORDS

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

1. Contracts other than small purchases contain provisions that allow for administrative, contractual or legal remedies if contractors violate or breach contract terms, and provide for sanctions and penalties as appropriate.
2. All contracts in excess of \$10,000 shall provide for termination for cause and for convenience by the Parish including the manner in which it will be done and the basis for settlement.
3. All construction contracts and subcontracts in excess of \$10,000 shall include provisions which require compliance with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in DOL regulations (41 CFR Part 60).
4. All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back" Act (18 USC 874) as supplemented by DOL regulations (29 CFR Part 3).
5. All contracts or subcontracts in excess of \$2,000 for construction or repair shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by DOL regulations (29 CFR Part 5).
6. All construction or repair contracts or subcontracts in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers, shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by DOL regulations (29 CFR Part 5).
7. Each contract shall include a notice of State requirements and regulations pertaining to reporting and patent rights under any contract involving respect to any discovery or invention which arises or is developed in the course of or under such contract, and of the State requirements pertaining to copyrights and rights in data.
8. All negotiated contracts shall include a provision that makes it possible for the State, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents,

papers, or records of the contractor/firm that are directly pertinent to the contract, for the purpose of making audit examination excerpts and transcriptions. Further, the contract must include a provision that all required records will be maintained by the contractor/firm for a period of four years after the Parish formally closes out each LCDBG program.

9. All contracts, subcontracts, and subgrants in amounts in excess of \$100,000 shall contain a provision which requires compliance with the requirements of Sections 306 of the Clean Air Act (42 USC 1857 h), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
10. Contracts shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P. L. 94-163).
11. The Parish will be permitted to require changes, remedies, changed conditions, access and record retention, and suspension of work clauses approved by the State.

CONTRACT ADMINISTRATION

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