**(Org Name)**

**Procurement Policy – Federal Funds**

**The Coronavirus State and Local Fiscal Recovery Funds (SLFRF)**

**June 2024**

**I. Purpose**

The purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

**II. Policy**

1. **Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed). The requirements of this Policy also apply to any subrecipient of the funds.

This policy does not apply to contracts that are not funded with federal financial assistance. All references to solicitation, procurement, contracts and similar terms within this policy only refer to those which are intended to be funded with federal financial assistance.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

1. **Compliance with Federal Law.** All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. (Org name) will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the Mississippi Department of Finance have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.
2. **Contract Award.** All contracts shall be awarded to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.
3. **No Evasion.** No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.
4. **Contract Requirements**. All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.
5. **Contractors’ Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.
6. **Approval and Modification.** The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

**III. General Procurement Standards and Procedures:**

(Org name) shall procure all contracts in accordance with the requirements of this Section of the Policy.

A. Competition. All procurements shall be conducted in a manner that provides, to the maximum extent practical, full and open competition. Procurements shall:

i. Avoid noncompetitive practices that may restrict or eliminate competition, including but not limited to:

a. Unreasonable qualification requirements.

b. Unnecessary experience and excessive bonding requirements.

c. Noncompetitive pricing practices between firms or affiliated companies.

d. Noncompetitive contracts to consultants on retainer contracts.

e. Organizational conflicts of interest.

f. Specifying “brand name” only instead of allowing “an equal to” product.

g. Arbitrary actions.

ii. Not intentionally split a single purchase into two or more separate purchases to avoid dollar thresholds that require more formal procurement methods.

iii. Exclude contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for a proposal from competing for such procurement.

iv. Include in any prequalified list an adequate number of current, qualified vendors, firms, or products.

v. Not preclude potential bidders from qualifying during the solicitation period.

vi. Not use any geographic preferences (state, local or tribal) in the evaluation of bids or proposals, except where expressly mandated or encouraged by applicable Federal statutes.

B.Profit. For sole source procurements or when cost analysis is used, profit must be negotiated as a separate element of the procurement price.

i. To establish a fair and reasonable profit, consider: complexity of work performed, risk borne by contractor, contractor’s investment, amount of subcontracting, quality of contractor’s record and past performance, and industry profit rates in surrounding geographical area for similar work.

ii. (Org name) may not use either the cost plus a percentage of cost, or percentage of construction cost methods of contracting.

C. Minority Owned, Women Owned, and Small Business Vendors. (Org name) is committed to taking all necessary affirmative steps to assure that minority business, women’s business enterprises and labor surplus area firms (“MWSB Vendors”) are used whenever possible. Such steps include:

 i. Placing qualified MWSB Vendors on solicitation lists;

ii. Soliciting MWSB Vendors whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MWSB Vendors;

iv. Establishing delivery schedules, where requirement permits, which encourage participation by MWSB Vendors;

v. Using services and assistance, as appropriate, of such organizations as Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

D. Minimum Bonding Requirements. For construction or facility improvement contracts or subcontracts exceeding $250,000, the requirements for bonding shall, at a minimum, be as follows:

i. A bid guarantee from each bidder is equivalent to five percent of the bid price*.*

ii. A performance bond on the part of the contractor is for 100% of the contract price*.*

iii. A payment bond on the part of the contractor is for 100% of the contract price*.*

iv. All bonds required in this section are obtained from companies holding certificates of authority as acceptable sureties pursuant to the surety requirements for

companies doing business with the United States (31 CFR Part 223).

E. Solicitations. All solicitations shall incorporate a clear and accurate description of the technical requirements for products or services to be procured. Descriptions:

i. Must not contain features which unduly restrict competition.

ii. May include a statement of the qualitative nature of the material, product or service to be procured.

iii. When necessary, must set forth minimum essential characteristics and standards necessary to satisfy its intended use.

iv. Must avoid detailed product specifications if at all possible.

v. May use a “brand name or equivalent” description to define performance or other salient requirements when impractical or uneconomical to make a clear and accurate description of technical requirements. Specific named brand features required to be met must be clearly stated.

vi. Must identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids and proposals.

F. Considerations. (Org name) will consider taking the following actions when procuring goods and services:

i. Conduct a lease vs. purchase analysis, when appropriate, including for property and large equipment.

ii. Consolidate or break out procurements to obtain a more economical purchase, if possible.

iii. Use state and local intergovernmental or inter-entity agreements, or common or shared goods and services, where appropriate.

iv. Use federal excess and surplus property in lieu of purchasing new equipment and property, if feasible and reduces project costs.

v. Use value engineering clauses to offer reasonable opportunities for cost reductions in construction contracts for projects of sufficient size.

vi. Use time and materials contracts only if no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at their own risk. If such contract is negotiated and awarded, (Org name) must assert a high degree of oversight to obtain

reasonable assurance that contractor using efficient methods and effective cost controls.

**IV. Procurement Methods:**

A. All procurements. All procurements made under this policy shall:

i. Be necessary, at a reasonable cost, documented, not prohibited by law or the applicable funding source, and made in accordance with this Policy.

ii. Avoid acquiring unnecessary or duplicative items.

iii. Engage responsible vendors who possess the ability to perform successfully under the terms and conditions of a proposed procurement. (Org name) shall consider: vendor integrity, public policy compliance, past performance record and financial and technical resources.

B. Standard Methods. For transactions meeting the specifications set forth in Appendix 1, (Org name) Purchasers shall follow the applicable procurement method set forth therein and according to Federal Purchasing Requirements.

C. Exceptions to Standard Methods.

i. *Sole Source*. Procurement by solicitation of a proposal from a single source may only be used if one of the following apply and are documented:

a. Item is only available from a single source;

b. Public exigency or emergency will not permit any delay;

c. Federal awarding agency or pass-through expressly authorizes in response to a (Org name) request; or

d. After soliciting a number of sources, competition is determined inadequate.

**V. Contract Provisions:**

All (Org name) procurement contracts shall contain the applicable contract provisions contained in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

**VI.** **Documentation:**

A. Debarment. (Org name) shall:

i. Confirm and document that the vendor is not excluded from doing business with the federal government (see www.sam.gov/SAM/) before entering into a contract.

B. Records. (Org name) shall maintain records sufficient to detail history of each procurement transaction. These records must include, but are not limited to:

i. A description and supporting documentation showing rationale for procurement method (e.g., cost estimates);

ii. Selection of contract type;

iii. Written price or rate quotations (such as catalog price, online price, email or written quote), if applicable;

iv. Copies of advertisements, requests for proposals, bid sheets or bid proposal packets;

v. Reasons for vendor selection or rejection, including Finance Committee and Board minutes, rejection letters and award letter; and

vi. The basis for the contract price.

**VII. Compliance with this Policy*:***

(Org name) shall maintain oversight to ensure that contractors and vendors perform in accordance with the terms, conditions, and specifications of contracts. Violations of this policy may result in disciplinary action, up to and including termination.

**Appendix 1**

Standard Methods of Procurement – Nongovernmental Entity/Nonprofit Organization

|  |  |  |
| --- | --- | --- |
| **Type** | **Threshold** | **Method** |
| ***Micro-purchase*** | **< $10,000** | * Price must be reasonable
* Periodically distribute purchases equitably among qualified vendors
 |
| ***Small Purchase*** | **$10,000.01 < $250,000** | * Obtain written price or rate quotations from at least two qualified vendors
* Example documentation: catalog price, online price, email or written quote
 |
| ***Sealed Bids*** | **> $250,000** |  **Pre-Solicitation*** Conduct cost or price analysis

**Solicitation*** Publicly advertise invitation for bids
* Include specifications or information sufficient for bidders to respond

 - Provide adequate time to respond  - Solicit a sufficient number of bids  **Bid Review/Selection**  - Open bids at time and place set forth in invite - Award to lowest responsive and responsible bidder - May reject bids for sound, documented reason  - Award written, fixed price contract |
| ***Competitive Proposals*** | **> $250,000** |  **Pre-Solicitation** - Conduct cost or price analysis **Solicitation** - Publicly advertise request for proposals - Identifies all evaluation factors and their relative Importance - Solicit bids from at least two vendors **Proposal Review/Selection** - Consider proposals to maximum extent practical - Use written method to conduct technical evaluations of the proposals - Award contract to bidder with most advantageous proposal, considering price and other factors - Award fixed price or cost-reimbursement contract |