

Policy F, Facility Expansion – July 2023

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FA PROCUREMENT

Procurement: When procuring property and services under a grant, 43 CFR Part 12 Section 12.76 will be followed. (43 CFR Part 12 Attached.)

FAA PROCUREMENT OF COMPETITIVE PROPOSALS

Procurement of 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 will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (2) Proposals will be solicited from an adequate number of qualified sources;
- (3) Grantees and sub-grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- (4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) Grantees and sub-grantees 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.

FAB PROCUREMENT OF NONCOMPETITIVE PROPOSALS

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

- (1) Procurement by non competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
 - The item is available only from a single source.
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
 - The awarding agency authorizes noncompetitive proposals.
 - After solicitation of a number of sources, competition is determined inadequate.
 - The item has already been bid by the Government Sourcewell.
 - An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury to the TDHE/Tribe, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency.

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- (2) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
- (3) Grantees and sub-grantees may be required to submit the proposed procurement to the awarding agency for pre-award review.

FAC PROCUREMENT BY SEALED BIDS

Bids are publicly solicited and a firm-fixed-price contract is awarded to the responsible bidder who bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The following 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.
- (3) 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.

The following are the requirements:

- (1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of know 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 in order 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.
- (5) Any or all bids may be rejected if there is a sound documented reason.

FC CONTRACT COST AND PRICE

(1) Grantees and sub-grantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and sub-grantees will negotiate profit as a separate element of the price for each contract in which there is not price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be

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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.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

FCA CONTRACT PROVISIONS

A grantee's and sub-grantee's contracts must contain such provisions as; changes, remedies, changed conditions, access and records of retention, suspension of work, and other clauses. In detail:

- (1) Administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases.)
- (2) Termination for cause and for convenience by the grantee or sub-grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).
- (3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 12, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub-grantees).
- (4) Compliance with the Copeland "Anti-kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and sub-grants for construction or repair).
- (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub-grantees when required by Federal grant program legislation).
- (6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and sub-grantees in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).
- (7) Notice of awarding agency requirements and regulations pertaining to reporting.
- (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (9) Notice of awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (10) Access by the grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions.

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- (11) Retention of all required records for three years after grantees or sub-grantees make final payments and all other pending matters are closed.
- (12) Compliance with all application standards, orders, or requirements issued under section 306 of the Clean Air Act, section 308 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations. (Contracts, subcontracts, and sub-grants of amounts in excess of \$100,000).
- (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

FD AWARDING AGENCY REVIEW

- (1) Grantees and sub-grantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchases.
- (2) Grantee and sub-grantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitation for bids, independent cost estimates, etc. when:
 - A grantee's or sub-grantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
 - 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; or
 - The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
 - The proposed award 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
 - A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
- (3) A grantee or sub-grantee will be exempt from the pre-award review if the awarding agency determines that its procurement systems comply with the standards of this section.
 - A grantee or sub-grantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
 - A grantee or sub-grantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or sub-grantee that it is complying with these standards. A grantee or sub-grantee will cite specific procedures, regulation, standards, etc., as being in compliance with these requirements and have its system available for review.

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FDC NAMING NEW FACILITIES

It is the Board's responsibility to name all new facilities with input from Stakeholders.

FE BONDING REQUIREMENTS

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall 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 his bid, execute such contractual documents as may be required within the time specified.

(2) 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 of the contractor's obligation under such contract.

(3) 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.

FEAB ARCHITECTS/ENGINEERS

Architects will be used for renovation/modification and construction projects as required by state, federal and local regulations. The Superintendent shall advertise for architectural services, the board will interview, rank and hire according to qualification and the needs of the school. The architect shall advise the Superintendent on the phases of the program for which they have technical training and experience. The architect performs other functions as follows:

1. Translates the educational program for which the facilities are needed into building design and specification.
2. Advises the Superintendent on letting of contracts.
3. Supervises or directs construction.
4. Advises the Superintendent as to costs associated with additions.
5. Recommends approval and acceptance of completed facilities.

FGBC BOARD MEMBER CONFLICT OF INTEREST IN THE BIDDING PROCESS

Refer.: BHA Board Member Conflict of Interest
GAGA Conflict of Interest
GAGB Conflict of Interest (Nepotism)

The standards of conduct governing the performance of the Enemy Swim Day School's board and employees engaged in the award and administration of contracts is that No employees, officer or agent of the school 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. Such a conflict would arise when: (1) The employee, officer or agent, (2) Any member of his immediate family, (3) His or her partner, or (4) 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. The grantee's or sub-grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential

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contractors, or parties to sub-agreements. Grantee and sub-grantees may set minimum rules where the financial interest is not substantial or the gift is unsolicited item of nominal intrinsic value. To the extent permitted by State or local law of regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub-grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

FGBD BOARD MEMBER DISCIPLINARY ACTION FOR VIOLATION OF CODE OF CONDUCT

Violation of BHA and/or FGBC is grounds for immediate removal from the School Board. The school board chairperson, (or if it concerns the chairperson the next board member according to the chain of command that is not involved in the violation), will notify in writing the board member within five days of the violation and the subsequent removal. The board member will be removed at the next regularly scheduled board meeting.

FGBD CONTRACT AWARDS PROCEDURE

Procedures:

- 1 The selection of a site for a new building is made in accordance with the criteria for the selection of the school and the guidelines provided by the BIA Office of Facility Management, recommendation of the Superintendent and approved by the Board.
- 2 For each project an architect is assigned on a contingent basis.
- 3 The Superintendent with authorization on the Board signs Architectural and construction contracts.
- 4 For each project a preliminary plan is developed and is approved by the Construction Committee, the School Board and other appropriate state and federal agencies.
- 5 The plans and specifications (working drawings) are prepared to conform to all local and federal codes governing public buildings. The Construction Committee, the School Board, the Office of Facility Management and other appropriate state and federal agencies will approve them.
- 6 Each addition to an existing building and the construction of a new building is advertised for construction bids with authorization from the School Board.
- 7 Sealed bids are received on the date as advertised and opened and read in public. An adequate number of quotes will be obtained prior to the opening of the bids.
- 8 Each bidder fills out a sheet entitled "Statement of Bidder's qualifications" stating his/her financial status and general information concerning his/her firm.
- 9 The tabulation of the bids for each project is certified by the architect and is presented to the Board with the certification of the Superintendent.
- 10 The low bidder is required to furnish the Board a one hundred percent performance and payment bond or a certified check equal to 1.5% of bid.
- 11 The low bid is analyzed and is compared to bids on similar projects and compared to the architect's cost estimates and to the control budget.
- 12 With the authorization of the Board, a construction contract is executed, which includes the Performance Bond, Payment Bond, Builders Risk Insurance, Worker's Compensation,

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Owners Protective Liability Insurance and Contractors Protective Liability Insurance. Indian Preference will be a major consideration on any contracts awarded by the Board.

FGEB LIABILITY INSURANCE

All contractors providing services for the Enemy Swim Day School must have liability coverage to protect the public unless the contractor is performing services on an hourly basis.

FGI BUILDING PROJECT RECORDS AND REPORTS

The Superintendent shall be responsible for making reports to the Board on the progress of the construction projects. At the invitation of the Superintendent, the architects supervising particular projects may be asked to appear before the Board. The Superintendent shall be responsible for keeping the appropriate records and documents concerning each construction project, such as copies of contracts, cost analysis sheets and plans and specifications.

Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and sub-grants, The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly. The Superintendent will be responsible for the completion of all reports from the project manager and the architects and engineers. The project reports timeline will be set up at the beginning of each project. The reports will submitted to the construction committee, the school board, the appropriate Bureau of Indian Affairs Offices and others as necessary.

FH COMPLETED BUILDING PROJECT

Upon completion of the building construction and a final inspection of all aspects by the architects, contractors and school officials, a recommendation for its acceptance shall be made.

FI TEMPORARY FACILITIES

The Superintendent, with guidance from the school board, can assign and /or negotiate temporary school facilities as needed.