



Procurement Update

To ensure the success of every project, the most stringent of Federal, State or Local regulations and statues must be followed. The following brief summaries are to highlight some of the current requirements that may impact your project. Part of the decision to apply for any federal grant is the decision to abide by what may be more stringent procurement practices.

Program Guidance

- Title 44, Code of Federal Regulation
- Title 2, Code of Federal Regulation
- Hazard Mitigation Assistance Guidance, March 29, 2015 edition
- Texas Local Government Code, for both municipalities and Counties

Updates That May Affect Your Procurement Practices

Per 2 CFR 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.

If a consultant service was used to prepare the application on a project, the consultant will not be eligible to participate as a project administrator unless the consultant was procured to prepare AND administer the project in the same solicitation prior to award of the project.

Per 2 CFR 200.319 Competition, Part (a):

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

Retainer contracts (or service contracts on retainer) are not eligible.

Per 2 CFR 200.320 Methods of procurement to be followed:

Acceptable methods of procurement include:

(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.

The State of Texas limits small purchases to \$100,000 for Counties and \$50,000 for municipalities. If your procurement policies have a lower threshold for small purchase, the most stringent rules will be followed.

(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.

This is the most common procurement method for construction contracts and equipment. You may not issue a change order to an existing competitively bid contract to add a federal activity; it must be clear in the bid documents that the activity being solicited contains a federally funded component. If a Construction Manager At Risk is used for your construction project, competitive proposal method may be used.

(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.

Project administrators, or “consultants”, are not defined as Professional Services per Texas Local Government Code, Chapter 2254 PROFESSIONAL AND CONSULTING SERVICES, Section 2254.002. As result, procurement of project administrator is not required to follow method (d) Procurement by competitive proposal process identified above. If competitive proposal process is used, the procurement must adhere to the complete requirement as identified in the regulation. In particular, consultants who write mitigation plans need not be registered professionals.

Per 2 CFR 200.323 Contract cost and price:

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

Cost plus percentage, or percentage of construction cost type contract is not eligible. Additionally, there may not be cost plus elements within what is otherwise an ordinary fixed-price contract.