

GOVERNMENT OF THE DISTRICT OF COLUMBIA
District Department of the Environment



SUSTAINABLE ENERGY UTILITY CONTRACT
&
ENERGY EFFICIENCY FINANCING PROGRAM CONTRACT

STANDARD OPERATING PROCEDURES (“SOP”)

I DEFINITIONS

I.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

Agency - the District Department of the Environment or DDOE.

Green energy website – www.greenenergy.dc.gov.

CO - the Contracting Officer of the Agency.

Code of Federal Regulations - the Code of Federal Regulations in effect at adoption of these rules, as it may be from time to time amended.

Day - a business day, excluding Saturdays, Sundays, and legal holidays in the District of Columbia.

District of Columbia Contract Appeals Board - the Contract Appeals Board established by the District of Columbia Procurement Practices Act of 1985, as amended (D.C. Law 6-85, D.C Code § 2-301.1 et seq.).

Director - the Director of DDOE.

District – the District of Columbia.

Responsible bidder or offeror - a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that will assure good faith performance.

Responsive bidder - a person who has submitted a bid which conforms in all material respects to the invitation for bids.

SEU Contract – the Agency’s contract with the Sustainable Energy Utility pursuant to section 201 of the Clean and Affordable Energy Act of 2008, “CAEA,” D.C. Code §8-1773.01 *et seq.*

EEFP Contract – the Agency’s contract with the Energy Efficiency Financing Program (“EEFP”) Administrator pursuant to section 305 of the Energy Efficiency Financing Act of 2010, “EEFA,” D.C. Official Code §8-1778.01, *et seq.*

II GENERAL REQUIREMENTS: PROCUREMENT AUTHORITY

- II.1 The Director shall designate a Contracting Officer (“CO”), who shall serve as the chief procurement officer of the Agency for the SEU Contract and the EEFP Contract.
- II.2 No director, officer or employee other than the CO shall obligate the Agency to procure any goods, services or construction, or execute, administer or modify any contract, unless that director, officer or employee has been authorized to do so in writing by the CO. Any violation of this prohibition by an employee shall constitute misconduct for disciplinary purposes.
- II.3 Except as provided in section II.4, the CO may make a written delegation of any authority conferred by this SOP to any employee whom the CCO designates as a contracting officer. Each such delegation shall remain in effect until modified or revoked by the CO.
- II.4 The CO may not delegate authority to make an emergency or sole source procurement pursuant to sections VIII or IX, if the procurement has a value of \$10,000 or more or make a payment for value received pursuant to section XIII.
- II.5 Whenever this SOP requires the CO to make a written determination concerning a procurement, the CO shall place a copy of the required determination in the file for that procurement and assure that the determination is available for public inspection.
- II.6 The authority conferred by this SOP on the CO to execute contracts, options, change orders, or payments for value received shall be subject to prior approval by the Director whenever so provided by an order of the Director. The CO shall maintain a copy of all such resolutions in a file available for public inspection.

III GENERAL REQUIREMENTS: METHODS OF PROCUREMENT

- III.1 Unless the CO elects to make a procurement pursuant to a contract of the U.S. General Services Administration or of the Chief Procurement Officer of the District of Columbia government, the CO shall procure any goods, services or construction by one of the methods set forth in this SOP, namely:
 - (a) invitation for bids;
 - (b) request for proposals;
 - (c) small purchase;
 - (d) emergency procurement; or
 - (e) sole source procurement.
- III.2 An invitation for bids or request for proposals shall be the preferred method of procuring all goods, services and construction, unless otherwise provided in this SOP.
- III.3 Where this SOP permits use of a small purchase or emergency procurement, the CO shall make the procurement by issuing a purchase order (except when section VII of these rules permits the use of blanket purchase agreement for small purchases).

- III.4 The CO shall prescribe the form of all purchase orders and blanket purchase agreements, which shall be issued on a fixed or not-to-exceed price basis and shall specify: the quantity of goods, services or construction ordered; any trade or prompt payment discounts offered; and the delivery date(s).
- III.5 The CO shall require offerors to submit and certify cost or pricing data in all procurements, contract modifications, and subcontracts of a value of \$ 100,000 or more, unless the CO makes a written determination that such data are unnecessary in accordance with the principles governing procurements by the Federal government set forth in relevant sections of Title 48 Code of Federal Regulations.
- III.6 The CO shall conduct cost or price analyses of all procurements, by whatever method made, in accordance with the principles governing procurements by the Federal government set forth in relevant sections of Title 48 Code of Federal Regulations.
- III.7 The CO shall publish in a newspaper of general circulation or on the Green energy website notice of all procurement awards of a value of more than \$100,000, regardless of the means by which the procurement is made.

IV GENERAL REQUIREMENTS: STANDARD PROCUREMENT PROVISIONS

- IV.1 The CO shall require that every contract to procure goods or services, by whatever method made, set forth standard provisions:
- a) specifying changes;
 - b) referencing Federal and District laws of special applicability; and
 - c) granting the Agency the right to:
 - (1) conduct inspections and audits,
 - (2) order the contractor to stop work,
 - (3) require indemnification, and
 - (4) terminate for default or convenience.
- IV.2 The CO shall include appropriate security provisions in all procurements of goods, services, including at least insurance against liability or loss whenever any contract will result in the contractor having possession or control of any property of the Agency.

V INVITATIONS FOR BIDS

- V.1 Each invitation for bids shall set forth at least the following:
- (a) bid submission requirements, including the address where bids are to be delivered and the time and date for receipt and opening of bids, which shall be at least 30 days from the date of issuance unless the CO determines that the nature of the procurement requires a quicker response;
 - (b) a description of the purchase, delivery or performance schedule, and any special requirements;
 - (c) instructions to bidders and all applicable standard contract provisions;
 - (d) the basis on which the award will be made;

- (e) a requirement that bids are irrevocable for 90 days after bid opening; and
 - (f) a requirement that each prospective bidder receiving an invitation acknowledge receipt of any subsequent amendment to the invitation.
- V.2 The CO shall publish a notice of each invitation for bids in a newspaper of general circulation or on the Green energy website.
- V.3 The CO may, in the CO's sole discretion, conduct a pre-bid conference to explain the procurement requirements. The CO shall announce the conference to all prospective bidders known to have received the invitation for bids.
- V.4 The CO may amend an invitation for bids by sending written notice to all prospective bidders known to have received the invitation for bids.
- V.5 A bidder may modify or withdraw a bid by giving written notice at the office designated in the invitation for bids at any time prior to the time set for bid opening.
- V.6 The CO shall not consider a late bid, modification or withdrawal unless: a late bid is the only one received; or the CO determines that a late modification makes the terms of a timely bid that would have been successful more favorable to the Agency.
- V.7 If the CO determines, in the CO's sole discretion, that it is in the best interests of the District, the CO may waive, or allow a bidder to correct, minor irregularities after bid opening. A minor irregularity is a matter of form not of substance, and one that can be corrected without prejudice to other bidders, such as: a bidder's failure to specify the number of its employees; or a bidder's failure to acknowledge receipt of an amendment where the bid is clearly responsive to the amendment.
- V.8 The CO may cancel an invitation for bids at any time prior to bid award, if the CO determines that cancellation is in the best interests of the District.
- V.9 The CO shall not disclose technical or pricing information of any bidder to a competitor in any discussions.
- V.10 The CO shall make award to the lowest responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, if the CO determines in writing that the bidder is responsible and the prices offered are reasonable.
- V.11 The CO shall give written notice of award to the successful bidder after all required approvals have been obtained.

VI REQUESTS FOR PROPOSALS

- VI.1 Each request for proposals shall set forth at least the following:
- (a) proposal submission requirements, including the address where proposals are to be delivered and the time and date set for receipt of proposals, which shall be not less than 30 days from the date of issuance unless the CO determines that the nature of the procurement or the needs of the Agency require a quicker response;
 - (b) scope of services, delivery or performance schedule, and any special requirements;
 - (c) instructions to offerors and all applicable standard contract provisions;
 - (d) evaluation factors and the relative importance of each factor;
 - (e) requirement that proposals are irrevocable for 120 days after the closing date for submission of price proposals or of best and final offers, if requested; and

- (f) requirement that each prospective offeror receiving a request acknowledge receipt of any subsequent amendment to the request.
- VI.2 The CO shall publish notice of each request for proposals in a newspaper of general circulation or on the Green energy website.
- VI.3 The CO may, in the CO's sole discretion, conduct a pre-proposal conference to discuss procurement requirements. The CO shall announce the conference to all prospective offerors known to have received the request for proposals.
- VI.4 The CO may amend a request for proposals by sending written notice at a minimum as follows:
 - (a) to all prospective offerors known to have received requests for proposals, if the time set for receipt of proposals has not passed;
 - (b) to all responding offerors, if the time for receipt of proposals has passed but the proposals have not yet been evaluated; or
 - (c) to those offerors in the competitive range, if the competitive range has been established.
- VI.5 An offeror may modify or withdraw a proposal by giving written notice at the office designated in the request for proposals at any time prior to the time set for the submission of proposals.
- VI.6 The CO shall not consider a late proposal, modification or withdrawal, except in two circumstances:
 - (a) the CO may consider a late proposal if it is the only one received;
 - (b) the CO may consider a late modification if he determines that it makes more favorable to the Agency the terms of a timely proposal that would have been successful.
- VI.7 If the CO determines in the CO's sole discretion that it is in the best interests of the District, the CO may waive, or allow an offeror to correct, minor irregularities after the time set for submission of proposals. A minor irregularity is a matter of form not of substance, and one that can be corrected without prejudice to other offerors, such as: an offeror's failure to specify the number of its employees; or a offeror's failure to acknowledge receipt of an amendment where the proposal is clearly responsive to the amendment.
- VI.8 The CO may cancel a request at any time prior to award, if the CO determines that cancellation is in the best interests of the District.
- VI.9 If the CO so determines, the CO may hold written or oral discussions with all offerors whose proposals are within the competitive range. All proposals that have a reasonable chance of being selected for award on the basis of the evaluation criteria set forth in the request shall be within the competitive range.
- VI.10 The CO shall not disclose technical or pricing information of any offeror to a competitor in any discussions.
- VI.11 Upon completion of discussions, the CO shall issue to all offerors in the competitive range a written request setting a cut-off date for submission of best and final offers.
- VI.12 The CO may elect to require repeated submission of best and final offers.
- VI.13 The CO shall make award to the responsible offeror whose proposal is most advantageous to the District, as determined by a written evaluation of proposals on the basis of the criteria set forth in the request.
- VI.14 The CO shall give written notice of award to the successful offeror after all required approvals have been obtained.

VII SMALL PURCHASES

- VII.1 The CO may use the small purchase procedures set forth in this section to procure goods, services or construction if the total amount to be purchased does not exceed \$ 100,000 in value. No procurement shall be divided for the purpose of meeting the dollar limitation of this section.
- VII.2 The CO may procure goods, services or construction of a value of \$ 5,000 or less without obtaining competitive quotations. Action to verify price reasonableness in writing need be taken only if:
- (a) The CO suspects or has information to indicate that the price may not be reasonable; or
 - (b) Purchasing a supply or service for which no comparable pricing information is readily available.
- VII.3 In order to promote competition and assure that the purchase is in the best interests of the District, the CO shall solicit quotations from at least three sources for all small purchases of a value of more than \$ 5,000. If possible, two of the sources shall be sources that were not included in the previous solicitation for similar items.
- VII.4 For a small purchase of a value of more than \$ 5,000, the CO may solicit quotations from only two sources, if the CO determines in writing that it is impractical to solicit from more than two sources. In no event may this section be used to make a procurement based on the solicitation of a quotation from a single source.
- VII.5 For each small purchase of a value of more than \$ 5,000, the CO shall make an award based upon a written determination that the price to be paid to the successful bidder is fair and reasonable; the determination shall include the name of each business from which a quotation was solicited, the date of the solicitation, and the amount of the quotation.
- VII.6 The CO shall use a purchase order to make a small purchase, except that a blanket purchase agreement may be used to fill anticipated repetitive needs for goods, services or construction by establishing a charge account with a vendor for the purchase of such goods, services or construction over a stated period of time and in a stated amount, so long as the total amount to be purchased does not exceed \$ 100,000.
- VII.7 Each blanket purchase agreement shall require that the prices charged to the Agency shall be as low or lower than those charged to the supplier's most favored customer for comparable quantities, terms and conditions.

VIII EMERGENCY PROCUREMENT

- VIII.1 If the CO makes a written determination that a procurement is necessary to meet an essential requirement of the Agency in emergency circumstances, the CO may procure goods, services or construction without regard to the procedures set forth in sections V, VI, and VII.
- VIII.2 Any written determination by the CO supporting an emergency procurement shall include:
- (a) a finding that circumstances which were not reasonably foreseeable by the Agency have created a need for goods, services or construction which, if not immediately filled, will endanger the continuation of an essential function of the Agency;
 - (b) a description of steps taken to solicit bids or proposals from as many potential competitors as possible under the emergency condition;
 - (c) a finding that anticipated costs to the Agency will be fair and reasonable.
- VIII.3 The CO shall not make any procurement under this section to meet any continuing need of the Agency, beyond what is necessary to meet the emergency condition.

VIII.4 The CO shall include all applicable standard contract clauses in any purchase order issued under this section.

IX SOLE SOURCE PROCUREMENT

IX.1 The CO shall take all reasonable steps to avoid using sole source procurements.

IX.2 The CO may procure goods, services, or construction on a sole source basis without following the procedures set forth in sections V, VI and VII if the CO:

- (a) makes a written determination that the minimum needs of the Agency can only be met by such goods, services or construction and that the proposed sole source is the only source capable of providing them; or
- (b) makes a written determination that such goods, services or construction are an integral part of a transaction by the Agency to acquire real property.

IX.3 The CO's written determination shall include the following:

(a) For a determination under subsection IX.2(a):

- (i) a description of the Agency's requirement, including the estimated cost;
- (ii) an explanation of the unique nature of the procurement and of the contractor's unique qualifications;
- (iii) a determination that the costs to the Agency will be fair and reasonable; and
- (iv) a description of the market survey conducted and list of potential sources contacted, or an explanation for why such description or list was not possible.

(b) For a determination under subsection IX.2(b), the CO shall include in the written determination:

- (i) a description of the goods, services or construction which are integral to the real property transaction;
- (ii) the estimated cost to the Agency of the real estate and the integral goods, services or construction; and
- (iii) a determination that the costs to the Agency of the integral goods, services or construction will be fair and reasonable.

IX.4 The CO shall include all applicable standard contract clauses in any procurement made under this section.

X PROTESTS

X.1 An actual or prospective offeror or bidder whose direct economic interests would be affected by the award of, or the failure to award, a procurement, is an interested party with standing to assert a claim that the solicitation or award of, or the failure to award, the procurement, is contrary to law or this SOP by filing a written protest with the CO.

X.2 In order to be timely, a protest shall be filed:

- (a) in the case of an alleged defect in an invitation for bids or request for proposals, before the time set for bid opening or for the receipt of proposals; or
- (b) in all other cases, within seven days after the protestor knew or should have known of the alleged defect or other ground for protest.

- X.3 Each protest shall be signed by the protestor or the protestor's authorized representative, and shall contain: the name, address and telephone number of the protestor; identification of the procurement activity, including the number of any solicitation or contract; a concise statement of the facts which are the basis of the protest; and a specific request for action by the CO.
- X.4 The CO shall not consider any protest that is not filed within the time requirements of section X.2.
- X.5 The CO shall issue a written decision on each timely protest within ten days of receipt. Failure to issue a decision within ten days shall be deemed to be a denial of the protest for the purpose of appealing Agency's final decision to the District of Columbia Contract Appeals Board.
- X.6 If the CO determines in the CO's sole discretion that it is in the best interests of the District, the CO may grant an extension of time to accept bids or awards, withhold award of a contract, or seek suspension of performance of an awarded contract, if it appears that the protest has merit.
- X.7 An interested party may appeal the CO's decision to the District of Columbia Contract Appeals Board, which shall have exclusive jurisdiction to review final action of the Agency on any protest.

XI DISPUTES

- XI.1 This section shall govern all disputes arising under or related to contracts awarded by the Agency to procure goods, services or construction.
- XI.2 In order to make a claim under a contract, a party to the contract shall submit to the CO a written assertion that the party is entitled to the payment of money in a sum certain, the adjustment or interpretation of a contract provision, or other relief under the contract.
- XI.3 If a claim on behalf of a contractor has a value of more than \$ 50,000, the claim shall be accompanied by the certification of the contractor that the claim is made in good faith and that the amount or adjustment requested and the supporting data are accurate and complete to the best of the contractor's knowledge and belief.
- XI.4 The CO shall attempt to resolve all contractual disputes by mutual agreement after informal discussion. The CO may agree to the use of alternative dispute resolution procedures, in accordance with the principles governing procurements by the Federal government set forth in relevant sections of Title 48 Code of Federal Regulations at any time that the CO has authority to resolve the issue in controversy.
- XI.5 If the CO cannot resolve a claim after informal discussion, the CO shall, within 60 days of receipt of the claim, issue a written decision granting or denying the claim, giving the CO's reasoning, and setting forth the contractor's appeal rights. The CO's failure to issue a decision within this time shall be deemed to be a denial of the claim for the purpose of appealing the Agency's final decision to the District of Columbia Contract Appeals Board.
- XI.6 The District of Columbia Contract Appeals Board shall have exclusive jurisdiction to review final action of the Agency on any dispute.

XII DEBARMENT AND SUSPENSION

- XII.1 The CO shall notify a contractor that the CO proposes to debar or suspend the contractor from participating in the District's procurement of goods, services or construction if the CO determines that the contractor:
 - (a) has been convicted of a criminal offense (including violation of any antitrust law) in attempting to obtain, obtaining, or performing a public or private contract, or of any other criminal offense demonstrating a lack of integrity;
 - (b) has violated a provision of a contract of the Agency; or

(c) has committed any other ethical breach that would demonstrate that the contractor lacks the responsibility to qualify for business under this SOP.

XII.2 For the purposes of this section, "contractor" includes: the contractor's principal; any individual exercising substantial management authority for the contractor; in the case of a corporation or limited liability company, any of its officers or directors or any shareholder holding a substantial interest; and, in the case of a partnership, any partner.

XII.3 A contractor may request a hearing before the CO by delivering to the CO, within ten days of receipt of notice of a proposed debarment or suspension, the contractor's written request and arguments against the proposed action.

XII.4 The CO shall make a written decision on the proposed action.

XII.5 The District of Columbia Contract Appeals Board shall have exclusive jurisdiction to review final action of the Agency on any debarment or suspension.

XIII PAYMENTS FOR VALUE RECEIVED

XIII.1 The CO shall take all reasonable action to prevent employees from making any unauthorized obligation to procure goods, services or construction.

XIII.2 The CO may make a payment for value received under an unauthorized obligation if the CO makes a written determination that:

- (a) the Agency has obtained a benefit from another party's performance pursuant to the unauthorized obligation;
- (b) the obligation is within the authority conferred on the CO by this SOP;
- (c) the price to be obligated for performance is fair and reasonable; and
- (d) sufficient funds were available at the time of the unauthorized obligation and remain available.

XIV INTERPRETATION

XIV.1 In applying this SOP to procurements of goods, services and construction, the CO shall be guided by the principles governing procurements by the Federal government.