

**MOBILE COUNTY COMMISSION**



**PROCUREMENT POLICIES AND PROCEDURES FOR USE OF  
STATE AND FEDERAL GRANT FUNDS**

**ADOPTED JUNE 1, 2008**

**AMENDED OCTOBER 14, 2008**

**AMENDED AUGUST 9, 2010**

**AMENDED April 25, 2017**

**AMENDED October 23, 2017**

**AMENDED April 23, 2019**

## **INTRODUCTION**

These policies and procedures apply to all contracts, subawards, purchase orders and expenditure of grant funds for any procurement related to Federal and State grant funds, as defined herein. The purpose of this document is to establish efficient and economical procurement procedures that are compliant with both State (i.e., Title 39 and Title 41, Chapter 16 of the Code of Alabama (1975), as amended<sup>1</sup>) and Federal requirements (i.e., 2 CFR 200).

## **DEFINITIONS**

“Grant funds” or “grant monies” means funds received through federal and/or state grants, whether those funds come directly from a federal or state agency or from a pass-through entity.

“Non-Federal entity” means a state, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

“Pass-through entity” means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

“Procurement” means the purchase of labor, services, or work and the purchase or lease of goods (materials, equipment, supplies or other personal property), by the expenditure or anticipated expenditure of federal or state grant funds.

“Public Works” mean the construction, installation, repair, renovation, or maintenance of public buildings, structures, sewer, waterworks, roads, curbs, gutters, side walls, bridges, docks, underpasses and viaducts as well as any other improvement to be constructed, installed, repaired, renovated, or maintained and to paid in whole or in part with grant funds, as generally consistent with §39-2-1(6) of the Code of Alabama.

“Simplified Acquisition Threshold” means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. The simplified acquisition threshold is currently \$250,000, but this threshold is periodically adjusted for inflation.<sup>2</sup>

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<sup>1</sup> All references to the Code of Alabama herein refer to the Code of Alabama (1975), as amended.

<sup>2</sup> OMB Memorandum M-18-18 dated June 20, 2018 was issued to implement statutory changes to the micro-purchase and the simplified acquisition thresholds for financial assistance, changing these to \$10,000 and \$250,000 respectively. While the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 2.1 (Definitions) does not currently reflect these changes, the memo provides an exception allowing recipients to use the higher thresholds in advance of revisions to the FAR and the Uniform Guidance at 2 CFR §200.102. HUD Birmingham has concurred with the use of these higher thresholds.

“Subaward” means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity.

“Subrecipient” means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.

When not otherwise defined herein, the definitions at 2 CFR 200 Subpart A (acronyms and definitions) apply.

## **APPLICABLE LAW**

The Federal procurement standards set out at 2 CFR §200.318 through §200.326; the State of Alabama competitive bid law applicable to the purchase of labor, services or work and the purchase or lease of goods (“procurement” as defined herein) per §41-16-50 et seq., Code of Alabama; and the State of Alabama competitive bid law applicable to construction and improvement of public works found at §39-2-1 et seq., Code of Alabama, are applicable to procurements hereunder. To the extent of conflict between the requirements of this policy and Federal or State requirements, the most restrictive shall apply.

Individual grants may contain further requirements unique to those grants and in addition to the requirements of this policy.

The Alabama Code of Ethics for Public Officials, Employees, Etc., §36-25-1 et seq., Code of Alabama, including its conflict of interest provisions, is applicable to County officials, officers, and employees engaged in procurement. All Subrecipients, regardless of whether such would typically be subject to the Alabama Code of Ethics for Public Officials, Employees, Etc., are also required to comply with this act and disclose in writing any potential conflict of interest to the County, as required by 2 CFR 200.112.

## **GENERAL PROCUREMENT STANDARDS**

(a) Oversight must be maintained to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The acquisition of unnecessary or duplicative items must be avoided. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis must be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(c) Entry into state and local intergovernmental agreements or inter-entity agreements, where appropriate, for procurement or use of common or shared goods and services is encouraged.

(d) Use of state or federal excess and surplus property in lieu of purchasing new equipment and property when such use is feasible and will reduce project costs is encouraged.

(e) Use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions is encouraged. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(f) Contracts shall be awarded only to responsible and responsive contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, suspension or debarment, and financial and technical resources.

(g) Records must be maintained sufficient to detail the history of each procurement. Such records are to include, but not necessarily be limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(h) A time and materials contract:

(1) May be used only after a determination that no other contract is suitable. The contract must include a ceiling price that the contractor exceeds at its own risk. A high degree of oversight must be asserted in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(2) Means a contract whose cost to the County is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(i) The County alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the County of any contractual responsibilities under its contracts.

*[Reference: 2 CFR §200.318]*

## **COMPETITION**

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards set out in 2 CFR §200.318-.326. Any contractor that develops or drafts specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Restrictions to competition should be minimized. Situations considered to be restrictive of competition include, but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) Procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) All solicitations must:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which must be fulfilled and all other factors to be used in evaluating bids or proposals.

(d) Prequalified lists of persons, firms, or products which are used in acquiring goods and services must be current and include sufficient qualified sources to ensure maximum open and free competition. Potential bidders may not be precluded from qualifying during the solicitation period.

*[Reference: 2 CFR §200.319]*

## METHODS OF PROCUREMENT TO BE FOLLOWED<sup>3</sup>

I. The procurement of all labor, services<sup>4</sup>, or work and the purchase or lease<sup>5</sup> of goods (materials, equipment, supplies, or other personal property) must conform to one of the following methods.

(a) **Procurement by micro-purchases:** Procurement where the aggregate dollar amount does not exceed \$10,000.00<sup>6</sup> (or that amount set out in 2 CFR §200.67, as subject to Federal Acquisition Regulation 48 CFR Subpart 2.1, as may be amended) may be awarded without soliciting competitive quotes if the price is deemed to be reasonable. To the extent practicable, such awards must be distributed equitably among qualified suppliers.

(b) **Procurement by small purchase procedures:** Procurement where the aggregate cost which is more than \$10,000.00, but less than \$15,000.00 (or that amount set out in § 41-16-50(a), Code of Alabama, as the same may be amended from time to time).

In the case of procurement by small purchase, price or rate quotations will be obtained, whenever possible, from three (3) vendors (and never fewer than two vendors). Quotations may be secured via fax, email, telephone or otherwise. All solicitation efforts and quotations must be documented in writing for the file so that information regarding the vendor, date, and amount of quote can be readily determined.

(c) **Procurement by sealed bids (formal advertising):** Procurement where the aggregate cost is \$15,000.00 or more per §41-16-50 Code of Alabama: Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible and responsive bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price (including unit price contracts which are based on estimated quantities). The sealed bid method is subject to the following.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

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<sup>3</sup> Reference is made to 2 CFR §200.320 and Code of Alabama as noted.

<sup>4</sup> Competitive bidding exemptions related to professional services per §41-16-51 (a)(3) Code of Alabama are **NOT** exempted herein; however, for the purposes of architectural and engineering services, these are only subject to procurement by competitive proposals if the cost will exceed the Simplified Acquisition Threshold as defined at 2 CFR 200.88 and 48 CFR Subpart 2.1 §2.101, noting that the OMB Memorandum dated 6/20/18 changed the simplified acquisition threshold to \$250,000. This variation is noted because price cannot be used as a selection factor in the procurement of A/E services per 2. CFR §200.320(c)(5).

<sup>5</sup> Applies where the lessee is or become legally and contractually bound under the terms of a lease to pay a total amount of \$15,000 or more, per §41-16-50(a), Code of Alabama.

<sup>6</sup> The current micro-purchase threshold per OMB Memorandum dated 6/20/18 is \$10,000; however, for construction subject to 40 U.S.C. Chapter 31, subchapter IV, Wage Rate Requirements (Construction), the threshold is \$2,000.

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) 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.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;

(ii) Invitations for bids must be publicly advertised in accordance with the Code of Alabama;

(iii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iv) All bids must be publicly opened at the time and place prescribed in the invitation for bids;

(v) A firm fixed price contract award must (except where all bids are rejected) 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 must 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; and

(vi) Any or all bids may be rejected if there is a sound documented reason.

II. Procurement of public works must conform to one of the following methods.

(a) **Procurement of public works \$50,000 or less:** Procurement may be done with or without formal advertising for sealed bids per §39-2-2(b)(1), Code of Alabama.

In the case of procurement of public works \$50,000 or less, price or rate quotations will be obtained, whenever possible, from three (3) vendors (and never fewer than two vendors). Quotations may be secured via fax, email, telephone or otherwise. All solicitation efforts and quotations must be documented in writing for the file so that information regarding the vendor, date, and amount of quote can be readily determined.

(b) **Procurement by sealed bids (formal advertising) is required for the procurement of public works in excess of \$50,000** as required by §39-2-2 Code of Alabama: Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible and responsive bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price (including unit price contracts which are based on estimated

quantities). The sealed bid method is the preferred method for procuring construction, subject to the following conditions:

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) 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.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;

(ii) Invitations for bids must be publicly advertised in accordance with the Code of Alabama;

(iii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iv) All bids must be publicly opened at the time and place prescribed in the invitation for bids;

(v) A firm fixed price contract award must (except where all bids are rejected) 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 must 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; and

(vi) Any or all bids may be rejected if there is a sound documented reason.

III. Procurement by competitive and/or noncompetitive proposals can be used under certain conditions and where bidding is not appropriate.

(a) **Procurement by competitive proposals (Request For Proposals - RFP):** 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) RFPs must be publicized and responses must be considered to the maximum extent practical;

- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The RFP must identify all significant evaluation factors, including price or cost where required, and their relative importance, which will be used in evaluating proposals;
- (4) Responses must be evaluated using criteria listed in the advertisement or solicitation;
- (5) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (6) Competitive proposal procedures may be used 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<sup>7</sup>. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(b) **Procurement by noncompetitive proposals:** Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source, which is documented in the file;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

IV. Procurement by a non-profit organization acting as a non-Federal entity (as noted in paragraph g below) provides a uniform standard for these organizations.

**Procurement by a non-profit organization** acting as a non-Federal entity: Title 41 and Title 39 of the Code of Alabama do not apply to non-profit organizations. In

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<sup>7</sup> Fair and reasonable compensation for A/E professional services will be subject to a written and routinely accepted standard. While the standard may differ based on the source of grant funding, standards recognized herein include: 1) USDA Alabama Rural Development Approved Fees for Professional Engineering Services as of 3/10/10 (or future revisions), 2) Alabama Building Commission Architectural Fee Scale (current or future revisions), and 3) Cost Estimating Tool for Engineering & Design Services, as provided by FEMA as of 12/18/15 (or future revisions). While other standards may also be used based on funding and/or grant program requirements, the use of such standards will need to be properly documented. Also see footnote #4.

order to provide a uniform and reasonable standard, such organizations shall follow the requirements and applicable law as set forth herein. Further, when procurement by sealed bids (formal advertising) is required for a public works project, the non-profit will follow the requirements specific to a municipality rather than a county, as outlined at §39-2-2, id.

### **CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTITIES, AND LABOR SURPLUS AREA FIRMS**

(a) All necessary affirmative steps must be taken to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as State agencies, local Chambers of Commerce, the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

*[Reference: 2 CFR §200.321]*

### **PROCUREMENT OF RECOVERED MATERIALS**

A non-Federal entity that is a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **CONTRACT COST AND PRICE**

(a) A cost or price analysis must be performed in connection with every procurement action in excess of the current Simplified Acquisition Threshold (\$250,000 per 2 CFR §200.88 as set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 §2.101) including contract modifications. The method and degree of analysis will depend on the facts surrounding the particular procurement situation, but as a starting point, independent estimates must be made before receiving bids or proposals.

(b) Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. Consideration must be given to the complexity of the work to be 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.

(c) Costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under 2 CFR Subpart E—Cost Principles.

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

*[Reference: 2 CFR §200.323]*

## **ALLOWABLE COSTS**

Grant funds can only be used on allowable costs, which means that these are included in the project budget and are in compliance with the policies outlined herein.

*[Reference: 2 CFR §200.302(b)(7) & 2 CFR §200.403]*

## **FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW**

The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed. Further, the non-Federal entity must also make available pre-procurement and procurement documents available for review upon request, consistent with the requirements of 2 CFR §200.324.

*[Reference: 2 CFR §200.324]*

## **BONDING REQUIREMENTS**

Bonding is required as set out in §39-1-1, et seq., Code of Alabama and 2 CFR §200,325(a) for public works. Bonding may be required as set out in §41-16-50, et seq.,

*[Reference: 2 CFR §200.325]*

## CONTRACT PROVISIONS

Contracts must contain the applicable provisions described in Appendix II to Part 200— Contract Provisions for non-Federal Entity Contracts Under Federal Awards. In addition, other provisions may be required contingent upon requirements specific to the grant program and/or funding entity.

*[Reference: 2 CFR §200.326]*

## RELATION TO OTHER POLICIES

This policy supplements and does not supplant the County's "General Purchasing Policies and Alabama Competitive Bid Law Guidelines."

When a subrecipient does not have written procurement policies, those outlined herein will apply. In the event a subrecipient's procurement policies differ from the policies set forth herein, the County's policies and procedures will govern.

## PROTECTED PERSONALLY IDENTIFIABLE INFORMATION (PII)

To the extent that the procurement process produces documents which contain PPII, access to records will be protected (both electronic and hard copies) to the extent feasible from unnecessary release. Further protection of PPII will comply with all applicable provisions of 2 CFR 200.

STATE OF ALABAMA

COUNTY OF MOBILE

I, Glenn L. Hodge, Interim County Administrator, certify that the foregoing is a true and correct copy of the Procurement Policies and Procedures for Use of State and Federal Grant Funds, as amended, approved by the Mobile County Commission in regular meeting convened on the 23<sup>rd</sup> day of April, 2019,.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Mobile County Commission on this 23<sup>rd</sup> day of April, 2019

  
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Glenn L. Hodge  
Interim County Administrator