



PROCUREMENT POLICY UPDATED AUGUST 2020

PURPOSE

This policy is furnished to ensure that all supplies, equipment, construction, and services purchased under a federal award are obtained in an open and effective manner and in full compliance with the provisions of applicable federal statutes and executive orders. This policy is written to comply with the procurement guidelines of the Uniform Guidance (UG), formally 2 C.F.R 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

The overall purpose of procurement regulations is to ensure that Rock Island Economic Growth Corporation (RIEGC) and its affiliates (collectively, GROWTH) get the highest quality of desired goods and services at the best price possible. Further, the regulations are aimed at streamlining the process of procurement while maintaining adequate controls. These procurement procedures apply to all staff involved in the federal procurement process and to all types of procurement using federal funds.

COMPETITION

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. GROWTH shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.

Procurements must be conducted in a manner that prohibits the use of statutorily or administrative imposed state or local geographical preferences in evaluation of bids or proposal except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This requirement does not preempt state licensing requirements. For architectural and engineering services geographic location may be a selection criteria.

Prequalified lists of persons, firms or products must be current and include enough qualified sources to ensure maximum open and free competition.

Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to GROWTH, price, quality and other factors considered. Other factors shall include the bidder's or offeror's previous track record of compliance with federal, state, and local laws and regulations and contractual obligations. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in GROWTH's interest to do so.

PROCUREMENT PROCEDURES

GROWTH personnel involved in procurement shall:

- (1) Avoid purchasing unnecessary or duplicative items.
- (2) Where appropriate, consider lease and purchase alternatives to determine which would be the most economical and practical.
- (3) Provide for all of the following in all solicitations for goods and services:
 - (a) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition;
 - (b) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals;
 - (c) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards (or minimum essential characteristics);
 - (d) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation; and
 - (e) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- (4) Make affirmative steps to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible and take all of the following steps to further this goal:
 - (a) Ensure that small businesses, minority-owned firms, and women's business enterprises are on solicitation lists and are used to the fullest extent practicable;
 - (b) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises;
 - (c) Dividing total requirements when economically feasible, into smaller tasks or quantities to permit maximum participation by small businesses, minority-owned firms and women's business enterprises;
 - (d) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually;
 - (e) Establish delivery schedules, where the requirement permits, which encourage participation by small businesses, minority-owned firms, and women's business enterprises; and

- (f) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.
 - (g) Requiring the prime contractor, if sub-contractors are to be let, to take affirmative steps in (a) – (f) above.
- (5) Determine the type of procurement to be used and ensure that it is appropriate for the particular procurement as follows:

(a) **Micro-Purchases of \$10,000 or less:** may be awarded by soliciting bids or obtaining quotes but are not required if the price is determined to be reasonable in the opinion of the personnel authorized to purchase. Micro-purchases should be distributed equitably among qualified suppliers whenever possible.

(b) **Small Purchases between \$10,000 and \$250,000:** price or rate quotations must be obtained from an adequate number of qualified sources. A bidding process is required for contracts, but GROWTH is not required to select the lowest price vendor. Document considerations of quality, reputation, price, etc.

There are the three types of purchases over \$250,000:

(c) **Construction Projects over \$250,000 with a Firm Fixed Price:** requires procurement by publically solicited sealed bids. The contract must be awarded to the lowest price qualified bidder whose bid conforms to all material terms and conditions. Bids must be opened publically. Bids may be rejected if there is a sound documented reason.

(d) **Competitive Proposals over \$250,000 Based on Either a Fixed Price or Cost Reimbursement:** this method is used when conditions are not appropriate for the use of sealed bids. Contracts must be awarded to a qualified vendor whose proposal is most advantageous to the program, with price and other factors considered, i.e., price is one of several quantitative and qualitative factors. The basis for considering and selecting the vendor must be documented. *(For example: GROWTH seeks services of an architect for a new building project. While there are technical specifications, there is also a qualitative/creative aspect to the project. GROWTH obtains several bids and makes a selection based on both the qualitative and quantitative (price) aspects. The consideration and decision process, possibly by rating each of the aspect of the proposal and awarding the bid to the architect with the highest overall score should be documented.)*

(e) **Sole Source Contracts over \$250,000:** solicitation from a sole source may only be used if one or more of these criteria are met: 1) the service or good provided is unique, 2) in the case of an emergency, 3) if the federal funder authorizes it, or 4) after a number of attempts at a competitive process the competition is deemed inadequate. The basis for considering and selecting the vendor must be documented.

- (6) Ensure that contracts are only made with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as:

- (a) Price
- (b) Quality of goods/services. Such a justification must be verifiable.
- (c) Availability of goods/services within the required delivery time.

- (d) After sale services, including availability of parts/supplies.
- (e) Bidder's previous records of performance and service, including compliance with laws, regulations, contractual obligations, and public policy.
- (f) Ability of bidder to render satisfactory service in this instance.
- (g) Financial stability of the vendor.
- (h) Availability of bidder's representatives to call upon and consult with
- (i) Payment terms
- (j) Warranty offered.
- (k) Ability to provide samples
- (l) Bidder is not suspended or debarred from participation in federal contracts per the System for Award Management (SAM).

COST/PRICE ANALYSIS

A cost or price analysis must be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold (currently \$250,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, an independent estimate should be done before receiving bids or proposals.

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. To establish a fair and reasonable profit, 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.

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

PROCUREMENT RECORDS

Procurement records and files for purchases in excess of the micro purchase threshold (currently \$10,000) shall include the following, at a minimum:

- (1) Rationale for the method of procurement (justification for lack of competition when competitive bids or offers are not obtained)
- (2) Basis for contractor selection; and
- (3) Basis for award cost or price.

CONTRACT ADMINISTRATION

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. GROWTH shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

CONTRACT PROVISIONS

GROWTH shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

- (1) Contracts in excess of the small purchase threshold (currently \$250,000) shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- (2) All contracts in excess of the micro purchase threshold (currently \$10,000) shall contain suitable provisions for termination by GROWTH, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (3) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for GROWTH to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds.
- (4) All negotiated contracts (except those for less than the small purchase threshold, currently \$250,000) awarded by GROWTH shall include a provision to the effect that GROWTH and any grantor, applicable federal agency, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- (5) All contracts for construction projects of sufficient size should contain clauses for value engineering to offer reasonable opportunities for cost reductions.
- (6) All contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60 must include the Equal Employment Opportunity clause.
- (7) All prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act.
- (8) All contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 USC 3702 and 3704 (Contract Work Hours and Safety Standards Act).
- (9) All contracts in excess of \$150,000 must contain a provision that requires compliance with the Clean Air Act and the Federal Water Pollution Control Act, where applicable.

FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW

GROWTH 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 to ensure that the item or service specified is the one being proposed for acquisition.

GROWTH must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates.

BONDING REQUIREMENTS

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently \$250,000), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of GROWTH provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.

If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100% of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- (c) A payment bond on the part of the contractor for 100% 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.

CODE OF CONDUCT

A Code of Conduct shall govern the performance, behavior and actions of GROWTH, including Board members, employees, directors, volunteers, or agents who are engaged in any aspect of procurement, including – but not limited to – purchasing goods and services; awarding contracts and grants; or the administration and supervision of contracts.

- (1) No employee, officer, director, volunteer or agent of the GROWTH shall participate in the selection, award or administration of a bid or contract supported by Federal funds if a conflict of interest is real or apparent to a reasonable person.
- (2) Conflicts of interest may arise when any employee, officer, director, volunteer or agent of GROWTH has a financial, family or any other beneficial interest in the vendor firm selected or considered for an award.
- (3) No employee, officer, director, volunteer or agent of GROWTH shall do business with, award contracts to, or show favoritism toward a member of his/her immediate family, spouse’s family or to any company, vendor or concern who either employs or has any relationship to a family member; or award a contract or bid which violates the spirit or intent of Federal, State and local procurement laws and policies established to maximize free and open competition among qualified vendors.

- (4) GROWTH's employees, officers, directors, volunteers or agents shall neither solicit nor accept gratuities, gifts, consulting fees, trips, favors or anything having a monetary value in excess of twenty five dollars (\$25) from a vendor, potential vendor, or from the family or employees of a vendor, potential vendor or bidder; or from any party to a sub-agreement or ancillary contract.

Violations of this Code of Conduct may be subject to disciplinary action, up to and including termination, depending on the severity of the violation as determined by management and/or the Board.

CONFLICTS OF INTEREST

RIEGC and its affiliates (collectively GROWTH) require staff and members of the Board of Directors to comply with all applicable federal, state, and local laws, rules and regulations pertaining to GROWTH's activities, to conduct themselves ethically and with integrity; and to avoid any conflict between their own interests and the interests of GROWTH. No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest.

See also separate Conflict of Interest Policy in place.