Procurement: AVOIDING DHS-OIG Audit Findings!

PROCUREMENT CHECKLIST

Project Title:

FEMA Project Worksheet (PW) Number:

Project Description:

Document Your File or be Prepared to Demonstrate the Following:

SOLICITATION		
	Is the solicitation (Request for Proposals [RFP] or Request for Qualifications [RFQ]) included in your file?	2 Code of Federal Regulations (CFR) 215.44(e); 44 CFR 13.36 (c)(3)(i)(ii)
	 Were prospective respondents allowed a reasonable amount of time to respond? 	44 CFR 13.36(d)(2)(ii)(A)
	 Does solicitation contain a clear and accurate description of the technical requirements for the material, product or services and scope of work (SOW)? 	2 CFR 215.44(a)(3)(i); 44 CFR 13.36(c) (3)(i)
	• Specifications may not contain features that unduly restrict competition.	2 CFR 215.43; 44 CFR 13.36(c)(3)(i)
	 Are there unreasonable requirements or unnecessary experience or excessive bonding requirements? 	44 CFR 13.36(c)(1)(i-ii)
	 Are there any "brand name" products specified without also listing "or equal"? 	44 CFR 13.36(c)(3)(i)
	Does the solicitation file evidence the following:	
	 Positive efforts in hiring small-business enterprises to the extent practical? 	2 CFR 215.44(b)(1); 44 CFR 13.36(e)
	• Positive efforts in hiring minority-owned business enterprises to the extent practical?	2 CFR 215.44(b)(1); 44 CFR 13.36(e)
	• Positive efforts in hiring women-owned business enterprises to the extent practical?	2 CFR 215.44(b)(1); 44 CFR 13.36(e)
	 Positive efforts in the utilization of labor surplus firms? 	44 CFR 13.36(e)
	Is the publication (advertisement, invitation to bid, etc.) included in your file?	44 CFR 13.36(d)(2) et seq.
	Is a record of respondents that were rejected as not responsible or not responsive and rejection reasoning included in your file?	2 CFR 215.44(d); 44 CFR 13.36(b)(8)(9)
	Are there an adequate number of responses documented in the file (two [2] or more for large purchases and three [3] for small purchases)? Keep records of proposals in your file.	2 CFR 215.43; 44 CFR 13.36(d)(2) (i)(B) and (d)(3); 44 CFR 13.36(d)(3) (ii); <i>Disaster Assistance Policy</i> (DAP) 9580.212



SOLICITATION (CONTINUED)				
	Are copies of all proposals, to include methodology of evaluation and selection process (e.g., bid summary, tabulation sheet, scoring sheet, cost analysis if needed [see COST ANALYSIS REQUIRED section on following pages] and recommendation) included in your file?	2 CFR 215.44; 44 CFR 13.36(d)(3)		
	Are there any potential conflicts of interest?	2 CFR 215.42; 44 CFR 13.36(b)(3)		
		·		
WHAT IS THE METHOD OF PROCUREMENT?				
	Procurement by small purchase. (≤\$150,000)	2 CFR 215.44(2); as amended by 75 FR 53129; 44 CFR 13.36(d)(2)(ii)(D)		
	Procurement by sealed bids (preferred method for construction contracts). Contract awarded to the lowest responsive, responsible bidder with a firm-fixed price contract (lump sum or unit price).	44 CFR 13.36(d)(2)(ii)(D)		
	Procurement by competitive proposals.	44 CFR 13.36(d)(3)		
	 If solicitation was for other than "Architectural and Engineering (A/E) professional services", was price included as a selection criteria? 	44 CFR 13.36(d)(3)(v)		
	 If solicitation was for A/E services, is a cost analysis included in your file (see COST ANALYSIS REQUIRED section, next page)? 	44 CFR 13.36(d)(3)(v)		
	• Does the solicitation clearly outline the scoring criteria and associated weights used for selection?	2 CFR 215.44 (a)(3)(ii); 44 CFR 13.36(d)(3)(i); 44 CFR 13.36(c)(3)(ii)		
	Procurement by noncompetitive proposals.	44 CFR 13.36(d)(4)		
	 Is there a justification for the use of this method of procurement included in your file? 	2 CFR 215.46(b); 44 CFR 13.36(d)(4) (i)-(iii)		
	Are intergovernmental agreements and Federal surplus property (if applicable) included in your file?	44 CFR 13.36(b)(5-6)		
TYPES OF CONTRACTS	FOR REIMBURSEMENT			
	Lump sum.	2 CFR 214.44(c); Public Assistance Guide - FEMA 322/June 2007, pages 52-53		
	Unit price.	2 CFR 214.44(c); Public Assistance Guide - FEMA 322/June 2007, pages 52-53		
	Cost plus a fixed fee.	2 CFR 214.44(c); Public Assistance Guide - FEMA 322/June 2007, pages 52-53		
	Time and materials contracts: Does it meet all the requirements (see citation)?	44 CFR 13.36(b)(10); Public Assistance Policy Digest - FEMA 321/January 2008, page 23		
PROHIBITED CONTRAC	TS			
	Cost plus a percentage of cost (NOT PERMITTED).	2 CFR 214.44(c); 44 CFR 13.36(f)(4)		
×	Percentage of construction cost (NOT PERMITTED).	2 CFR 215.44 (c); 44 CFR 13.36(f)(4)		
×	Piggyback (NOT PERMITTED).	DOLR, Version 2.0, page 5-128; Public Assistance Policy Digest - FEMA 321/ January 2008, page 23		

ONDING REQUIREME	INTS	
	Is this a construction or facilities improvement contract that exceeds small purchase threshold? If so:	2 CFR 215.48; 44 CFR 13.36(h)
	• Did the bid response include a 5% bid bond?	2 CFR 215.48(c)(1); 44 CFR 13.36(h) (1); LRS 38:2218
	• Did the winning contractor execute a performance bond for 100% of the contract?	2 CFR 215.48(c)(2); 44 CFR 13.36(h) (2); LRS 38:2219
	• Did the winning contractor execute a payment bond for 100% of the contract?	2 CFR 215.48(c)(3); 44 CFR 13.36(h) (3); LRS 38:2219
REQUIRED CONTRACT	PROVISIONS	
	Does the contract (>small purchase threshold) contain a provision for administrative and legal remedies for violation or breach of contract?	2 CFR 215.48(a); 44 CFR 13.36(i)(1)
	Does the contract (>\$10,000) contain a provision for termination of contract for cause and for convenience?	2 CFR 215.48(b); 44 CFR 13.36(i)(2)
	Does the contract (>\$10,000) contain a provision to comply with <i>Executive Order</i> (EO) <i>11246</i> , <i>Equal Employment</i> <i>Opportunity</i> (EEO)?	2 CFR 215 Appx. A(1); 44 CFR 13.36(i)(3)
	Does the contract (applies to all construction or repair contracts or subcontracts) contain a provision to comply with the <i>Copeland Anti-Kickback Act</i> ?	2 CFR 215 Appx. A(2); 44 CFR 13.36(i) (4)
	Compliance with the <i>Davis-Bacon Act</i> : There is NO REQUIREMENT for such compliance with the FEMA Public Assistance (PA) or Hazard Mitigation (HM) programs.	Public Assistance Guide - FEMA 322/ June 2007, page 44
	Is the contract required to comply with Sections 103 and 107 of the <i>Contract Work Hours</i> and <i>Safety Standards Act</i> ?	2 CFR 215 Appx. A(4); 44 CFR 13.36(i) (6)
	Does the contract (applies to contracts, subcontracts and grants >small purchase threshold) contain a provision to comply with Section 306 of the <i>Clean Air Act</i> , Section 508 of the <i>Clean Water Act</i> , <i>Executive Order 11738</i> and <i>Environmental Protection Act</i> (EPA) regulations, 40 CFR 15?	2 CFR 215 Appx. A(6); 44 CFR 13.36(i) (12)
	Does the contract contain a provision stating record retention and access requirements to all records?	2 CFR 215.48 (d); 44 CFR 13.42
COST ANALYSIS REQU	IDED	
		2 CED 215 45: 44 CED 12 26/6
	Were A/E or other professional services procured?	2 CFR 215.45; 44 CFR 13.36(f) 2 CFR 215.45; 44 CFR 13.36(d)(4)(ii)
	Is the contract a noncompetitive proposal?	and (f)
	Does the contract contain modifications and/or change orders?	2 CFR 215.45; 44 CFR 13.36(f)
×	Competitively procured contracts (small and large): Documentation demonstrating competitive procurement serves as a cost analysis.	2 CFR 215.45; 44 CFR 13.36(f)

PURPOSE

This **PROCUREMENT CHECKLIST** is a companion job aid to the **PROCUREMENT** GUIDE: Gelting and **KEEPING** your FEMA grant dollars! and the Procurement Desk Reference: DHS-OIG Audit Findings + FEMA Policy + Comments + Tips + MORE!. It is designed as a resource for attorneys, procurement officers, purchasing agents and grants management professionals who contract using FEMA grant funds.

DISCLAIMER

This document provides guidance on Federal procurement regulations. It does not and is not designed to address all procurement issues that a Subgrantee may experience and may be subject to other interpretation. It is the subgrantee's responsibility to assure all Federal regulations are followed in all circumstances involving Federal funding.

OVERVIEW

This checklist addresses the *Uniform Administration Requirements* (UAR) for FEMA grants as stated in 2 CFR Part 215 (applies to institutions of higher education, hospitals and other nonprofit organizations) and 44 CFR Part 13 (applies to State and local governments). It is suggested that there are few substantive differences between 2 and 44 CFR. 44 CFR Part 13 contains more detail. Note that 44 CFR Part 13 is considered the "Common Rule". Therefore, if your entity is governed by 2 CFR Part 215 and find that it is lacking in specific information, refer to 44 CFR 13.36. Whenever in doubt, follow 44 CFR Part 13.

Notes