

DWSRF Guidance Document Number 25
Procurement Guidelines

- I. This guidance document is intended to be a guide for owners and their engineers as to the procurement of construction materials and labor funded under the Drinking Water State Revolving Loan Program. The guidelines listed below generally follow Title 40, Volume 1, Part 36 Sec. 31 of the Code of Federal Regulations. Beginning October 30, 2009 the Davis-Bacon Act applies to all work requiring \$2,000 or more in construction labor such as mechanical services, heavy equipment operators, etc.
- II. To maintain an adequate level of competitive pricing protection for the owner and to keep the paper work at a reasonable level the procurement requirements have been divided into four general classifications for projects which are to be bid: Small Purchase (\$125,000 or less); Small Projects (between \$125,001 and \$249,999); Large Projects (\$250,000 or more); and Force Account. Force Account guidelines enable an owner with their own demonstrated construction expertise and equipment to construct a project or a portion thereof. Note: unless otherwise specified, the term "project" as used in this guidance refers to construction only.
- III. Under all four classifications, the owner and their engineers must receive prior approval from the Facilities Engineering Division (FED) to advertise for bid proposals (or in some cases price quotes) and approval to award a contract. To receive approval to advertise, the owner and their engineers must first receive a Permit-to-Construct, or if one is not necessary, written approval from the Water Supply Division (WSD).
- IV. Budget costs will be generated by using the engineer's estimate of probable cost plus a 10% contingency. Contracts will not be divided to reduce the dollar amount in order to use the next lower level of procurement requirements.
- V. Sole source procurement is prohibited, unless written justification is provided and written FED approval is obtained.
- VI. The boilerplate front end documents for the preparation of contract specification including Sets CS#1, CS#2 and CS#3 (for projects over \$250,000), and CS#5 (for projects under \$250,000) can be found on the FED website, <http://www.anr.state.vt.us/dec/fed/construction/frontenddocs.htm>. These must be used without modification. If work is jointly funded by the State and another agency such as USDA RD, consult with FED on the appropriate front end documents to use.
- VII. As there is risk involved in most construction procurement, we recommend (if not already required by FED) the owner make a decision prior to advertising for bid proposals as to whether or not to require some type of protection. This may be bid security, payment and performance bonds, or an irrevocable letter of credit. Adding protection may decrease the number of entities choosing to bid on the project.
- VIII. All types of procurement except for goods and services with less than a \$5,000 value are subject to 40 CFR, Volume 1, Part 33, Section 33.301 which states that loan recipients are required to

make good faith efforts to include Disadvantaged Business Enterprises (DBEs) whenever procuring construction equipment, services, and supplies. Contact FED for further guidance on providing DBEs the opportunity to offer pricing proposals and bids.

A. SMALL PURCHASE (\$125,000 OR LESS)

- (1) Small purchase procedures are those relatively simple and informal procurement methods for securing pricing proposals for services, supplies, or other property that do not total up to more than \$125,000.
- (2) The requirements for procurement are:
 - (a) The bid or price proposal period will be the time recommended by the engineer based on type of project.
 - (b) Advertisements may be in the form of a phone request, local paper or direct contact.
 - (c) A minimum of two bidders or price proposals.
 - (d) For procurement of goods and services with less than a \$5,000 value, the owner shall use their own procurement standards which may or may not require competitive pricing. Please consult with FED for more specific guidance including DBEs that are potential sources.

B. SMALL PROJECTS (\$125,001 TO \$249,999)

- (1) The requirements for procurement are:
 - (a) A minimum bid period of 21 days.
 - (b) A minimum of two bids is required to insure competition. Should there be less than two bids, the owner shall consult with FED to discuss alternatives.
 - (c) The owner must list all bidders and their respective bids and choose the lowest bidder. If the owner does not choose the lowest bidder, the owner must state in writing the reason for their preference and request the approval of FED.
- (2) The recipient of financial assistance must make attempts to secure the services of Disadvantage Business Enterprises (DBEs) whenever contracting for work, goods, or services, and it is economically feasible. As part of this effort FED will supply the solicitation list per the State's DBE Procurement Procedure. Affirmative steps include:
 - (a) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - (b) Dividing projects, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - (c) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually;
 - (d) Establishing delivery schedules which encourage participation by small and minority business, and women's business enterprises;
 - (e) Using the services and assistance of the Small Business Administration, and the

- (f) Requiring the general contractor, if subcontracts are to be let, to take the affirmative steps listed above.

C. LARGE PROJECTS (\$250,000 OR MORE)

- (1) These projects require the higher level of procurement which is now the standard requirement for water and wastewater projects, including treatment facilities, pump stations, and pipe lines. Projects of this size and scope require a minimum of three legal advertisements, one in a large paper with area-wide circulation and the other in the Dodge Report, Works in Progress, etc. (legal advertisement consists of the same ad run the same day of the week for three consecutive weeks).
- (2) The requirements for procurement are:
 - (a) A minimum bid period of 30 days. The advertisement for proposals must be placed in an area-wide paper, the Dodge Report, Works in Progress, etc. The FED Project Manager, when issuing the approval to advertise, shall place a copy of the bid advertisement on the Electronic Bulletin Board under the Municipal Contracts Section.
 - (b) All bids will be publicly opened at the time and place prescribed in the invitation for bids. Should there be only one bid, the owner may open the bid or return the unopened bid proposal to the bidder. If the bid is not opened the owner may then rebid the contract over a larger area to solicit a larger group of potential bidders or consult with FED to discuss alternatives.
 - (c) The owner must list all bidders and their respective bids (bid tab) and award the bid to the lowest responsive (conforms with all the material terms and conditions of the bid invitation) and responsible (can demonstrate successful completion of similar type and level of work) bidder. If the owner does not choose the lowest bidder, the owner must state in writing the reason for their rejection.
- (3) With these larger projects there are more specific requirements for the pre-bid solicitation and utilization of DBEs.
 - (a) FED will provide the owner with a DBE solicitation list. These DBEs must be solicited 30 days prior to the initial advertisement for bids in a newspaper.
 - (b) The FED Policy for procuring DBE services must be followed. This policy may be found on the FED/Construction website.

D. FORCE ACCOUNT

- (1) This type of procurement can be used when the owner intends to and has the capabilities to supply the majority of the labor and equipment needed to construct the project.
- (2) The owner must define the scope of work to be performed by Force Account, provide their labor and equipment rate summary which they customarily use for similar work, provide an itemized estimate (consult FED for acceptable format), and a discussion as to how they will keep track of the actual time charged when performing the work.
- (3) Any materials, services, and equipment rental which are to be supplied by someone other than the owner must be submitted to FED as a request for a "Small Purchase" procurement approval.

Honorable Jim Douglas, Governor Jonathan Wood, ANR Secretary Justin Johnson, DEC Commissioner

This guidance and related environmental information are available electronically via the internet. For information visit us through the Vermont Homepage at <http://www.vermont.gov> or visit VT WSD directly at <http://www.vermontdrinkingwater.org>

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