

Sea Turtle, Incorporated

Procurement Policy

U.S. Treasury Department / State of Texas

Purpose:

This policy is to establish guidelines that meet or exceed the procurement requirements for purchases or goods, services, and construction or repair projects when federal or state funds are being used in whole or in part to pay for the cost of a contract, services, or supplies. All procurement activities involving the expenditure of state or federal funds will be conducted in compliance with the Procurement Standards codified in 2 C.F.R. 200.317 through 200.326 unless otherwise directed in writing by the state or federal agency that awarded the funds.

Code of Conduct:

No director, employee, officer, or agent of Sea Turtle, Incorporated shall participate in the selection or in the award or administration of a contract supported by State of Texas or U.S. Treasury funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm or company selected for award.

No director, officer, employee or agent of Sea Turtle, Incorporated shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

Any alleged violations of these standards of conduct shall be referred to the Sea Turtle, Incorporated attorney. Where violations appear to have occurred, the offending director, employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal; where violations or infractions appear to be substantial in nature, the matter may be referred the appropriate officials for criminal investigation and possible prosecution.

Procurement Procedures:

All procurement solicitations must acknowledge the use of federal or state funding for the contract and that prospective contractors must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award. Additionally, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

The procurement procedure shall prohibit the sole use of state, local, or tribal geographical preferences. However, procurements shall include a domestic (US) preference for goods, products, and materials, in accordance with 2 CFR 200.322.

The director of each department of Sea Turtle, Incorporated, being responsible for procurement of services, supplies, equipment, or construction obtained with State of Texas or U.S. Treasury funds, shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall

consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the director, an analysis to determine which approach would be the most economical shall be undertaken.

Noncompetitive Contracts to Consultants on Retainer. Noncompetitive contracts to consultants on retainer contracts will be considered to be restrictive of competition.

Arbitrary Actions. Arbitrary actions are prohibited in the procurement process.

Sea Turtle, Incorporated will maintain a current list of prequalified contractors and vendors that is sufficiently large for maximum open and free competition. Prospective new contractors and vendors will be permitted to qualify during solicitation periods. Sea Turtle, Incorporated shall take affirmative steps to assure that small and minority firms, women's business enterprises, and labor surplus firms are solicited whenever they are potential qualified sources. Sea Turtle, Incorporated shall place qualified small and minority businesses and women's business enterprises on solicitation lists. The organization will use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business development Agency of the Department of Commerce. Sea Turtle, Incorporated shall ensure that the primary contractor, if subcontracts are to be let, follows all the above listed affirmative steps. (2 CFR 200.321) Sea Turtle, Incorporated shall also consider the feasibility of dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority firms, women's business enterprises, and labor surplus firms. Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses.

Sea Turtle, Incorporated shall assist the prime contractor whenever possible by providing copies of lists which identify qualified small and minority firms, women's business enterprises, and labor surplus area firms.

Selection Procedures:

All procurement carried out with State of Texas or U.S. Treasury funds, where Sea Turtle, Incorporated is a direct party, shall be carried out in a manner that provides maximum free and open competition. Procurement procedures will not restrict or eliminate competition. Sea Turtle, Incorporated shall not place unreasonable requirements on firms in order for them to qualify to do business. Nor will Sea Turtle, Incorporated encourage or participate in noncompetitive practices among firms. Sea Turtle, Inc. recognizes that contractors that develop or draft specifications must be excluded from competing for such procurements. Sea Turtle, Incorporated is alert to organizational conflicts which would jeopardize the negotiation process and limit competition. Sea Turtle, Incorporated will not require unnecessary experience of bonding requirements.

Pursuant to state law and federal regulations 2 CFR 200.318, all solicitations of offers shall incorporate a clear accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. A "brand name or equal" description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

All solicitations or offers shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.

Contracts shall be awarded only to responsible contractors/firms that possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Unless Sea Turtle, Incorporated determines that the U.S. or Texas grant interest is adequately protected (20.325), contracts or subcontracts for construction or facility improvements that exceed the Simplified Acquisition Threshold will require:

- A bid guarantee from each bidder equivalent to 5% of the bid price
- A performance bond for 100% of the contract price
- A payment bond for 100% of the contract price

Consideration shall be given to such factors as the contractor's/ firm's capacity, capacity in a coastal environment, integrity, compliance with public policy, record of past performance, environmental policies, and financial and technical resources.

Methods of Procurement:

Direct procurement by Sea Turtle, Incorporated shall be made by using one of the following methods depending on the type and value of service to be procured. In all cases where bids or proposals are solicited, they must be solicited from an adequate number of qualified sources.

Micro Purchase Procedures: Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (200.67 Micro Purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

Small Purchase Procedures: Simple, informal procurement procedures will be used where the purchase of materials, single task services, supplies, equipment, and/or property will not cost in the aggregate more than \$150,000 (or current applicable Simplified Acquisition Threshold), except where further limited by state law or U.S. Treasury policy. The Executive Director must obtain a minimum of three oral or written price or rate quotations from qualified sources. Documentation on all quotations received (whether oral or written) shall be made a part of the file. Selections shall be made principally on price. Payment shall be made upon delivery or completion.

Competitive Sealed Bids/Formal Advertising: A firm fixed price contract (either lump sum or unit price) shall be awarded to the responsible bidder whose bid is lowest in price and that conforms to all the material terms and conditions of the advertisement for bids. Competitive sealed bids can be used only when the following criteria are met: (1) there are complete, adequate, and realistic specifications or purchase descriptions; (2) there are two or more responsible bidders who are willing and able to compete effectively; (3) the procurement can be made on a firm fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price. Sealed bids will be the preferred method for entering construction contracts, unless it is impossible to meet the necessary requirements for using sealed bids. Bids will be solicited from an adequate number of known suppliers.

When formal advertising is used the following things shall be done:

- (1) The advertisement for bids shall be publicly advertised

- (2) The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the advertisement.
 - (3) All bids shall be opened publicly at the time and place specified in the advertisement for bids.
 - (4) A firm fixed-price contract award shall be made by written notice to the lowest responsible bidder whose bid conforms to the advertisement for bids. Where specified in the bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine low bid when prior experience indicates that such discounts are generally taken.
 - (5) Notwithstanding the above, any or all bids may be rejected when there are sound documented business reasons in the best interest of the State of Texas or U.S. Treasury Department and Sea Turtle Inc.
- (a)

As appropriate and to the extent consistent with law, Sea Turtle Inc, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Competitive Negotiation: (Requests for Proposals/Qualification statements)

The technique of competitive proposals is normally conducted with more than one source submitting an offer. All competitive proposals shall be conducted using a formal Request for Proposal/Request for Qualifications RFP/RFQ containing at least the minimum items in the attached outline (Attachment A). It is generally used when conditions are not appropriate for the use of sealed bids. Architectural and engineering services must be procured via requests for qualification statements. Other professional services may also be procured by requests for proposals. The following procedures will be used for competitive negotiation:

- (1) Requests for proposals or qualification statements must be advertised in a newspaper in the region. All submittals will be honored and entered into the competition.
- (2) Request for proposals or qualification statements shall contain a detailed list of tasks in the proposed scope of work that is expected to be accomplished.
- (3) The request for proposals or qualification statements shall identify all significant evaluation factors or selection criteria that will be used to rate the proposals/qualification statements. Requests for proposals shall always include cost and at least one non-cost evaluation factor.
- (4) The selection official or committee (if designated) shall review all proposals and statements received and make a technical evaluation of each. This shall also include a written statement that identifies the basis upon which the selection was made; including the importance of cost (under an RFP)
- (5) Contract award will be made to the responsible offeror whose submission is deemed most appropriate to Sea Turtle, Incorporated with consideration for price and qualifications. Unsuccessful offerors shall be notified in writing within ten working days of contract award. Documentation of notification shall be maintained in the contract selection file for the individual project.

For qualifications based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, at least three firms will be solicited. Following the review of the qualification statements received, the most qualified competitor will be selected to enter into contract negotiation. This will always include negotiation of price to insure cost reasonableness. At the conclusion of successful negotiation, the competitor shall be invited to enter into a contract.

Noncompetitive Negotiation/Sole Source: noncompetitive negotiation shall be used when small purchase, formal advertising, or competitive negotiation procedures are not feasible. Noncompetitive negotiation will involve solicitations of a proposal from only one source. This can also occur if solicitations under the competitive negotiation procedures result in only one proposal or qualification statement. Noncompetitive negotiation shall only be used when written authorization has been obtained from State or U.S. Treasury. In order to qualify for this type of procurement, one of the following circumstances must apply:

- (1) The item or service is available only from a single source.
- (2) It is determined that a public urgency or emergency exists and the urgency will not permit the delay beyond the time needed to employ one of the other three methods of procurement.
- (3) After solicitation of a number of sources, competition is determined to be inadequate.

Contract Pricing:

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

(2) Sea Turtle, Incorporated shall perform cost or pricing analysis in connection with every procurement action including contract modifications in accordance with the requirements of state or U.S. Treasury guidelines. Costs or prices based on estimated costs shall be allowed only to the extent that the costs incurred or the cost estimates included in negotiated prices are consistent with federal cost principles. (48 CFR Part 31) Lump sum prices will only be utilized when there is a definable work product and the quantity to be provided is certain and the contractor assumes all the risk for costs incurred. Unit prices can be utilized when there is a definable work product and the contractor assume all the risk for costs incurred, but the quantity is estimated. Cost reimbursement or time and materials will be utilized when the task does not result in a definable work product (see additional requirements for time and materials contracts also included in this policy).

(3) Cost reimbursement, unit or lump sum price, time and materials or a combination thereof may be utilized as appropriate.

(4) This will allow:

- i. A cost reimbursement type contract is most appropriate when the scope and extent of the work to be performed are not clearly defined, such as a professional services contract. A cost reimbursement contract must clearly establish a cost ceiling which may not be exceeded without formally amending the contract, and must identify a fixed dollar profit that may not be increased unless there is a contract amendment that increases the scope of the work.
- ii. A fixed price contract is appropriate when the scope of work is very well defined and product oriented. A fixed price contract must establish a guaranteed price that may not increase unless there is a contract amendment that increases the scope of the work. A fixed price contract can only be awarded when fair and reasonable prices can be established through adequate price

competition (with the solicitation is based principally on price), or through negotiation based on projected estimates of allowable costs.

- iii. Time and materials type contract may be used only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

- (a) The actual cost of materials; and

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

- (c) Material portions of the cost are to include only actual cost, without profit (excluding profit does not necessarily exclude indirect costs, overhead, or general and administrative expenses). Profit can be folded into the hourly rate to be charged for direct labor (along with indirect costs, overhead, and general and administrative expenses), notwithstanding the prohibition on cost plus percentage of cost contracts.

(5) Any contract procured by sealed bids will be a firm fixed price contract, although contracts procured by other means can also result in fixed price contracts.

(6) Any price which is negotiated based in whole or in part on estimates of the contractor's costs – even if the result of the negotiation is a fixed price – will be based on estimated allowable costs only and must involve a separate negotiation of profit. Separate negotiation for profit must also be followed for any price not competitively procured.

(7) Negotiation of Profit as a Separate Element of the Price. As noted above, profit must be negotiated as a separate element of the price (2 CFR 324(b)), not only for all cost reimbursement contracts (which is covered by Sea Turtle's procedures), but also for any price that is not competitively procured (even if, in the end, a firm fixed price is negotiated). The Federal Procurement Standards also establish what considerations should go into this negotiation.

Procurement Records:

Sea Turtle, Incorporated shall maintain records sufficient to detail the history of the procurement. The records shall include the following contract provisions and conditions:

- (1) Contracts other than small purchases or micropurchases shall contain provisions that allow for administrative, contractual, or legal remedies if contractors violate or breach contract terms, and provide for sanctions and penalties as appropriate.
- (2) All contracts in excess of \$10,000 shall provide for termination for cause and for convenience by Sea Turtle, Incorporated including the manner in which it will be done and the basis for settlement.
- (3) All construction contracts and subcontracts in excess of \$10,000 shall include provisions which require compliance with Executive Order 11246, Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60)

- (4) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti Kick Back" Act (18 USC 874) as supplemented by Department of Labor regulations. (29 CFR Part 3)
- (5) All contracts or subcontracts in excess of \$2,000 for construction or repair shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- (6) All construction or repair contracts or subcontracts in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers, shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5)
- (7) Each contract shall include a notice of federal requirements and regulations pertaining to reporting and patent rights under any contract involving respect to any discovery or invention which arises or is developed in the course of or under such contract, and of the state requirements pertaining to copyrights and rights in data.
- (8) All negotiated contracts shall include a provision that makes it possible for the Comptroller General of the U.S. or the Texas Comptroller of Public Accounts, or any of their duly authorized representatives, to have access to any books, documents, papers, or records of the contractor/firm that are directly pertinent to the contract, for the purpose of making audit examination excerpts and transcriptions. Further, the contract must include a provision that all required records will be maintained by the contractor/firm for a period of five years after Sea Turtle, Inc. formally closes out each state or federal grant.
- (9) All contracts, subcontracts, and subgrants in amounts in excess of \$100,000 shall contain a provision which requires compliance with the requirements of Section 306 of the Clean Air Act (42 USC 1857 h), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- (10)
- (11) A contract award must not be made to parties listed on the governmentwide Excluded Parties List System (EPLS) in the System for Award Management, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689. The EPLS contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order.
- (12) Contracts over \$100,000 must address Byrd anti-lobbying certifications. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award.
- (13) Applicable contracts must address procurement of recovered materials for procuring items designated in the EPA guidelines of 40 CFR 247. (2 CFR 200.322)
- (14) Contracts must not procure or obtain equipment, services, or systems which used "covered telecommunications equipment or services" as a substantial, essential, or critical piece of any system. At present, "covered telecommunications equipment or services" means telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or their subsidiaries or affiliates.

Contract Disputes

Contract and Administrative Disputes. The recipient (or subrecipient) that hired the contractor will be responsible for resolving any disputes that arise with the contractor. Disputes must not be passed to the funding agency.

Contract Administration:

Sea Turtle, Incorporated shall maintain contract administration systems that ensure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/firms will be a factor in subsequent contract negotiations and award. Remedial action by Sea Turtle, Incorporated through legal processes shall be considered in instances of identified significant nonperformance.

Procurement Policy Attachment A (RFP/RFQ Outline)

The Request for Proposal or Request for Qualification (RFP/RFQ) will contain all of the information the proposers need in order to successfully submit a proposal. The following should be included:

- (1) **Advertisement/Purpose:** A cover letter or introduction that summarizes the services being solicited and the due date for proposals.
- (2) **Program Information:** Includes an overview of the grant/project status and a summary of the roles and responsibilities of all involved parties to provide the context for the solicited services and capture the interest of potential respondents.
- (3) **Scope of Services:** Includes an overview of the solicited services, summarized general expectations, specify the anticipated role of the selected firm, and provides a detailed list of tasks to be accomplished. It should be connected to the fee proposal and be detailed enough to be in the final contract.
 - **Statement of Work (for RFP)** will list in detail the tasks the selected consultant will be expected to perform. List must be detailed enough for the consultant to provide price or estimated cost for the services.
- (4) **Submission and Evaluation Requirements:** Describes what sections should be included in the proposal (e.g. approach, organization chart, staffing plan, fee proposal, etc.) and what information each of those sections should contain. Also, describe the criteria the Committee will use to evaluate the proposal and the weights for each criterion. Submission requirements and evaluation criteria should be linked.
 - **Approach section (for RFP):** For each task identified in the scope of work, respondent is to describe how they would accomplish the task (s).
 - **Project staffing:** Include an organization chart, names and roles of principal staff members, time commitments for principal staff members, and attach resumes.
 - **Qualifications:** Include project summaries for your team's relevant experience, organized by firm or type of experience.
 - **Fee proposal (RFP only):** Price for services described in the approach, broken out by task.
 - **Evaluation Criteria:** List the criteria on which the proposals will be evaluated (e.g. creativity of approach, reasonableness of fee, quality of relevant qualifications, previous experience, etc.) and give the weighting for each criterion.
- (5) **Schedule and Required Information:** Provide information about the procurement not related to the actual project. This includes a schedule/timetable for the procurement, information on written

questions and pre-proposal conference, contractual obligations, information on conflict of interest, and all other required clauses.

- (6) Attachments: Provide any required forms (e.g. forms for fee proposal, certifications) that further clarify the expectations by including a sample contract, copies of the roles/responsibility's checklist, and /or scopes of work for the other consultants. And include more detailed information on the project (e.g. application or project summary).