



**LOS ANGELES COUNTY
COMMUNITY AND SENIOR SERVICES**

DIRECTIVE

Number: CD- 15 - 5 SUBJECT: Procurement of Goods and Services

Date: August 25, 2015 Effective Date: Immediately

TO: ALL CSS SUBRECIPIENTS

RECISSION:

This directive supersedes any prior directives issued by CSS on this subject.

PURPOSE:

The purpose of this directive is to provide subrecipients with policy and procedural guidance for procurement of goods and services funded through programs funded by the Los Angeles County Department of Senior and Community Services (CSS).

APPLICATION:

This directive applies to subrecipients funded by CSS through the following programs:

- Older Americans Act
- Community Service Block Grant
- Workforce Innovation and Opportunity Act

REFERENCES:

- 2 CFR Chapter I and Chapter II, Parts 200, 215, 220, 225, and 230 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Final Rule

BACKGROUND:

On December 26, 2013, the Office of Management and Budget revised the Uniform Administrative Requirements for Federal grants, combining those requirements with those of the audit requirements and cost principles. These regulations are codified at 2 CFR Chapter I and Chapter II, Parts 200, 215, 220, 225, and 230, became effective December 26, 2014, and are referred to as the Uniform Guidance. These rules contain the requirements for the procurement of goods and services funded with Federal subgrant

awards to subrecipients. The intent of these rules is to ensure that procurements are conducted in accordance with the rules set forth in those regulations.

DEFINITIONS:

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the subrecipient's regular accounting practices. (2 CFR 200.2)

Awarding agency (a) With respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, or (b) with respect to a subgrant, the party that awarded the subgrant.

Bidder's Conference is an open exchange between purchasers (e.g. subrecipient) and vendors (bidders) to help ensure a clear understanding of contract requirements.

Competitive Bidding is the process of inviting and obtaining bids from competing sources in response to advertised competitive specifications, by which an award is made to the lowest and/or best bidder meeting the specifications. The process contemplates giving potential bidders a reasonable opportunity to bid, and requires that all bidders be placed on the same plane of equality. Each bidder must bid on the same advertised specifications, terms, and conditions in all the items and parts of a contract. The purpose of competitive bidding is to stimulate competition, prevent favoritism, and secure the best goods and services at the lowest practicable price, for the benefit of the Federally funded subaward.

Contract means a legal instrument by which a subrecipient purchases property or services needed to carry out the project or program under a Federal award. The term as used in this Part does not include a legal instrument, even if the subrecipient considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward. (2 CFR 200.22)

Cost Analysis is the element-by-element examination of the estimated or actual cost of contract performance to determine the probable cost to the vendor. This is a more detailed and costly method than price analysis in terms of both time and manpower.

Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the subrecipient and

Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. (2 CFR 200.45)

Invitation for Bid (IFB) is a type of solicitation document, used in a formal competitive bidding process, which contains a precise statement and complete specification of what the agency is attempting to purchase. Qualifying bidders compete solely on the basis of cost.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a subrecipient's small purchase procedures. The subrecipient uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000. This threshold is periodically adjusted for inflation. (2 CFR 200.67)

Period of performance means the time during which the subrecipient may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award. (2 CFR 200.77)

Price Analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. This process determines whether the price is fair and reasonable.

Procurement includes any acquisition action which obligates CSS subaward funds for the purchase of equipment, materials, supplies, and program or administrative services beginning with the process for determining the need and ending with subaward completion and closeout.

Profit is money that is made by a for profit entity after all the costs and expenses associated with subaward services are paid.

Proposal is an offer made by one party to another as a basis for negotiations, prior to the creation of a contract.

Request for Proposal (RFP) is a document which invites offers from service providers for the delivery of a specific type of service. It includes a description of the product(s) or service(s) desired which enable a potential contractor to submit a proposal. The RFP will include information necessary for an objective evaluation and comparison to similar proposals. The RFP is the specific term applied to a solicitation where negotiation is used.

This method is the most commonly used form of solicitation when:

1. The nature of the service needed precludes developing a specification or purchase description so precise that all proposers would have an identical

understanding or approach to the requirements; and

2. Cost is not the only factor considered in making an award.

Request for Quotation (RFQ) is a document which is used to acquire the price(s) and pertinent information needed from a vendor/supplier. Since the quotation is not a formal offer, the awarding agency must reach a bilateral negotiated agreement before a binding contract exists. An RFQ differs from an RFP in that it simply asks for a price based on standard specifications that are generally known or apply industry wide.

It is appropriate to use an RFQ when:

1. A complete, adequate and realistic specification or purchase description is available; and
2. There are at least two responsible vendors who compete effectively for the award; and
3. The procurement lends itself to a firm fixed-price contract and selection of a contractor based wholly on price is appropriate and reflective of the nature of the products or service being purchased.

Responsible entity is an entity that has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible entities.

An entity may be determined responsible based on a review of its performance on any contracts. Particular attention will be given to violations of labor laws related to employee compensation and benefits, and evidence of false claims made by the entity against public entities. Labor law violations which are the fault of the subcontractors and of which the entity had no knowledge shall not be the basis of a determination that the entity is not responsible.

An entity may be declared non-responsible if, it has done any of the following: (1) violated a term of a contract; (2) committed an act or omission which negatively reflects on entity's quality, fitness or capacity to perform a contract with the awarding agency, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the subrecipient, the County, or any other public entity.

Responsive proposal is the term used for a proposal or bid that meets all requirements of the solicitation adequately; and the submitted document does not constitute a substitute or counter offer. When a bidder substitutes a "like item," the submittal is considered non-responsive when the like item fails to meet published specifications. The same principle holds when the proposal is a substitute or counter offer.

Simplified acquisition threshold means the dollar amount below which a subrecipient may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. 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. As of the publication of the Uniform Guidance, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

NOTE: For CSS pass-through subawards from the California Employment Development Department, the threshold for simplified acquisition is \$49,999. For AAA and CSBG funded subawards, the threshold will remain at \$150,000. (2 CFR 200.88)

Solicitation means an Invitation for Bid, Request for Proposal, or any other document, such as a Request for Quotation, issued by a purchasing agency for the purpose of soliciting offers to perform a contract.

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. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (2 CFR 200.92)

Subrecipient means a subrecipient that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. (2 CFR 200.93)

Supplies means all tangible personal property other than those described in Sec. 200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the subrecipient for financial statement purposes or \$5,000, regardless of the length of its useful life. (2 CFR 200.94)

Vendor is a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal subaward program.

POLICY:

The policy will be to use competitive selection in all procurement to ensure maximum open and free competition to the extent possible.

In conducting a procurement, the staff responsible will complete, sign and date all appropriate documentation. Authority to enter into contracts or agreements will be only with those individuals specifically assigned those responsibilities at both subrecipient and County level.

Every entity will maintain a "Code of Conduct" as a written code or standards of conduct

which will govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

The code at a minimum shall contain the following principles:

- Conduct oneself in such a manner as to bring credit upon the profession, as well as to maintain trust and confidence in the integrity of the contract management process.
- Avoid engagement in any transaction that might conflict or appear to conflict with the proper discharge of one's professional duties by reason of a financial interest, family relationship, or any other circumstances.
- Comply with all laws and regulations that govern the contract management process in the jurisdictions in which one conducts business, including protection of competition-sensitive and proprietary information from inappropriate disclosure.
- Not knowingly influence others to commit any act that would constitute a violation of this code.

The County Code of Conduct states the following:

“It is improper for any County officer, employee or agent to solicit consideration, in any form, from a Proposer with the implication, suggestion or statement that the Proposer’s provision of the consideration may secure more favorable treatment for the Proposer in the award of a Master Agreement or that the Proposer’s failure to provide such consideration may negatively affect the County’s consideration of the Proposer’s submission. A Proposer shall not offer or give either directly or through an intermediary, consideration, in any form, to a County officer, employee or agent for the purpose of securing favorable treatment with respect to the award of a Master Agreement.

“A Proposer shall immediately report any attempt by a County officer, employee or agent to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller’s Employee Fraud Hotline at (800) 544-6861. Failure to report such a solicitation may result in the Proposer’s submission being eliminated from consideration.

“Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.”

EXCLUSIONS:

The following exclusions for WIA subawards will apply to this policy:

On- The-Job Training (OJT): The competitive provisions of this policy will not apply to OJT employers, except in the procurement of OJT brokering services.

Individual Training Accounts (ITA): The delivery of classroom training from vendors through an ITA as described in 20 CFR 663.410 is excluded if the cost falls within the guidelines of the small purchase procedures.

GENERAL PROCUREMENT STANDARDS:

At a minimum, the procurement process will:

- Be conducted in a manner that provides full and open competition regardless of method or dollar amount. In procurements of space or equipment with a fair market value of \$500 or more, an analysis will be made of lease/rental versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical;
- Intend to minimize the use of sole source procurement except where necessary and justified;
- Clearly set forth the requirements that bidders or offerors must meet and the factors to be used in evaluating bids or proposals;
- Include a clear and accurate written description of the technical requirements for the material, product, or service to be procured, including the method of procurement, selection and basis for the type of contract, criteria for contractor selection or rejection, contractor selection and basis for payment. Competitive procurement will not contain features for the purpose of restricting or eliminating completion.
- Contracts will be awarded to responsible bidders who possess the potential ability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such factors but may include but not limited to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The contract award will also include the following provisions:
 1. Clearly specify deliverables, performance measures, and basic for payment;
 2. Compliance with all applicable regulations; and
 3. Assurance of nondiscrimination and equal opportunity as found in applicable subrecipient subaward clauses;
 4. Certifications, where applicable, regarding debarment, suspension, lobbying and drug free workplace.

5. The opportunity to protest the award.

- For WIOA subawards, procurement transactions with governmental organizations will be conducted on a cost reimbursable basis.
- For other than WIOA subrecipients, procurement transactions will be conducted on a cost reimbursable or unit price basis.
- To the extent possible, small firms, minority firms, and women-owned businesses will be included in bidders' lists. These firms will be provided the maximum opportunity to compete in all procurement of goods and services.
- Subrecipient funds will not be used to duplicate facilities or services available in the area (with or without reimbursement) from Federal, State or local sources, unless it is demonstrated that additional capacity is needed or that alternative services or facilities would be more effective or more likely to achieve performance goals and mission.
- Subrecipient must use their own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this directive.
- Subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- The subrecipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by Federal funds if he or she has a real or apparent conflict of interest. For example, such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- **The officers, employees, and agents of the subrecipient must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the subrecipient.**
- If the subrecipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational

conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

- The subrecipient's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- The subrecipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to factors including but not limited to as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- The subrecipient must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, all procurement documents and bid proposals, contractor selection or rejection, and the basis for the contract price.

COMPETITION:

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for these procurements. Some of the 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.

The subrecipient must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly permit, mandate or encourage geographic preference. Nothing in this section preempts state licensing laws.

The subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

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 the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

The subrecipient must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the subrecipient must not preclude potential bidders from qualifying during the solicitation period.

METHODS OF PROCUREMENT TO BE FOLLOWED:

The subrecipient must use one of the following methods of procurement.

Procurement By Micro-Purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000. To the extent practicable, the subrecipient must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable.

Procurement By Small Purchase Procedures

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified

Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

The maximum threshold for small purchases is \$49,999. The following guidelines for small purchases will apply:

For WIOA funded programs:

\$1 to \$9,999	At least two or more documented quotes or price**
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\$10,000 to \$49,999	RFQ\RFP process possible;***
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** Unless Sole Source justification exists.

*** RFQ/IFB/RFP process possible depending on circumstances.

For AAA and CSBG funded programs:

\$1 to \$49,999	At least two or more documented quotes or price**
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\$50,000 to \$150,000	RFQ/IFB/RFP process possible;***
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Prices/quotations can be obtained from catalogs, current price lists, prior receipts, or contact (in person, telephone, fax or e-mail) with vendors. Hard copy catalogs and price lists should be updated at least annually, however real-time Internet research is preferred.

With some departments and agencies, prices can also be obtained by preparing a list of commonly procured items and having providers submit prices that can be guaranteed for a "set time period."

For small purchases with WIOA funds between \$10,000 and \$49,999, a Request for Quote (RFQ) must be used. The RFQ specifies the quantity, time frames, and all the requirements of the product or services being sought. The RFQ must be provided in writing (including fax or e-mail). Three or more written quotes must be obtained with this method.

Proper documentation for a small purchase includes:

- The reason for selecting the small purchase method.
- The subrecipient's estimate of the potential purchase price.
- A description of the goods or services being purchased, including the quantity and any additional criteria used to determine the procurement decision. A copy of the RFQ would suffice.

- All providers contacted/considered and the prices offered using current catalogs, price lists, prior sales receipts, or formal quotes depending on the amount of the purchase.
- Why the provider was selected, including how the provider met any additional criteria, and the price analysis.
- Copy of the purchase document (sales receipt, contract).

A proposed small purchase or contract for an amount above the simplified procurement threshold may not be divided into several purchases or contracts for lesser amounts in order to circumvent the threshold limits described above.

Procurement By Sealed Bids (Formal Advertising)

Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

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

1. A complete, adequate, and realistic specification or purchase description is available;
2. 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.

If sealed bids are used, the following requirements apply:

1. The invitation for bids will be publicly advertised and 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;
2. 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;
3. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
4. A firm fixed price contract award will 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

5. Any or all bids may be rejected if there is a sound documented reason.

Proper documentation for a sealed bid purchase includes:

- The reason for selecting the sealed bid method.
- The subrecipient's estimate of the potential purchase price.
- A copy of the IFB.
- Bids received.
- Determination of the responsibility of the bidder.
- Why the provider was selected.
- Copy of the award document.

Procurement By Competitive Proposals

This method is typically used when the nature of the goods to be acquired cannot be defined as precisely as required by the sealed bid method. Competitive proposals are specifically used when factors other than price are important in the selection decision; however, procurements should be in excess of \$50,000.

Subrecipients must indicate in the Request for Proposal (RFP) the scope of work, the method for scoring the proposals, the deadline for receipt of proposals and the dispute process. A public notification of the RFP is normally given through an announcement in a local newspaper that covers the entire service area. An electronic or e-link copy of the RFP is sent to anyone who requests it and to any prior bidders.

A bidders' conference is usually held to allow interested parties to have any questions answered. Bidders' conferences also allow attendees to receive the same information. Bidders are required to submit their proposals to a specified location by a specified date and time.

Each RFP is reviewed and evaluated as to the merits of the proposal. This review includes a mandatory cost or price analysis. There should be a documented methodology for technical evaluation of each proposal. The review committee then makes a final recommendation as to which proposal(s) best meets the stated requirements. Careful documentation of the successful bidder selection should be maintained for reference. A public notice of intent to award is issued, and followed by the award, and the execution of the contract. If only one proposal is obtained and that proposal is deemed to be responsible, then the noncompetitive or sole source process may be used.

The subrecipient must ensure that all prequalified lists of persons, organizations, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the subrecipient must not preclude potential bidders from qualifying during the solicitation period.

If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
2. Proposals must be solicited from a pool of qualified sources;
3. The solicitation will identify all significant evaluation factors, including price or cost where required, and their relative importance.
4. The subrecipient must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
5. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
6. Unsuccessful offerors will be notified promptly.

Statement of Work

The subrecipient must 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 for the purpose of unduly restricting 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 identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Proper documentation for a competitive proposal purchase includes:

- The reason for selecting the competitive proposal method.
- The subrecipient's estimate of the potential purchase price.
- A copy of the RFP/IFB/RFQ.
- Bidders' List to which notices were mailed.
- Agenda, attendance record, and recording of a bidders' conference, if held.
- Bidders' conference questions and answers.
- Written responses to all clarifying questions received both at the bidders'

- conference and outside of the bidders' conference.
- Copy of each proposal received.
- The scoring criteria and the evaluation/scoring sheets for each proposal, including determination of the responsibility of the bidder and the cost or price analysis.
- References and applicable experience.
- Proof of financial capability.
- Methodology for cost allocation.
- Single audit, if performed.
- Documentation of the rationale for selection and funding any offeror which did not receive the highest score/ranking in the evaluation process.
- Completed cost or price analysis for each responsive bidder.
- Completed Memorandum of Negotiation for each contract.
- The public notice of intent to award.
- Copy of any submitted protests and the resolution of each.
- Copy of the award document.

Procurement By Noncompetitive Proposals

This form of procurement is used under conditions where competition is impractical, infeasible or inadequate. Noncompetitive procurement will be minimized to the extent practicable AND one of the following circumstances applies:

1. The item is available only from a single source;
2. Public exigency or emergency will not permit a delay resulting from competitive solicitation (for example, destruction of a subrecipient site requires the immediate acquisition of additional services from another deliverer of services).
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the subrecipient; or
4. After solicitation of a number of sources, competition is determined inadequate or more than one response is not received to the solicitation.

A cost analysis is required for all noncompetitive procurements. The reason for selecting this method along with the justification for the provider selection must be carefully documented and maintained.

Proper documentation for a sole source purchase includes:

- The reason for selecting the sole source method, including why the procurement was infeasible under one of the other procurement methods and which of the additional sole source conditions the procurement met.

- The subrecipient's estimate of the potential purchase price.
- A copy of the RFQ/IFB/RFP.
- A determination of the responsibility of the bidder and the cost analysis.
- Why the provider was selected.
- Copy of the award document.

Contracting With Small and Minority Businesses, Women's Business Enterprises, And Labor Surplus Area Firms

The subrecipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 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;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using 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.

PROHIBITED FORMS OF CONTRACTING

Cost-Plus-A-Percentage-Of-Cost Contracts

This type of contract pays the contractor costs undetermined at the time the contract is made and to be incurred in the future, plus a commission based on a percentage of these future costs. This method of contracting is prohibited with Federal funds.

Fixed Amount Subawards

Fixed amount subawards as described in the Definitions section of this directive are prohibited without the express written approval of CSS. Approval for this method of contracting will only be given up to the Simplified Acquisition Threshold of \$49,999, provided that the subaward meets the requirements for fixed amount awards in Sec. 200.201 of the Uniform Guidance.

CONTRACT PRICING:

The subrecipient must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000 or more) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the subrecipient must make independent estimates before receiving bids or proposals.

For purchases less than the Simplified Acquisition Threshold, subrecipients must perform a price analysis.

Cost Analysis

A cost analysis must be performed

- when the offeror is required to submit the elements of their estimated cost (e.g. under professional and, consulting services contracts); or
- no catalog or market price is available; or
- when adequate price competition is lacking, or
- for sole source procurements, including contract modifications or change orders.

The method and degree of cost analysis are dependent on the facts surrounding each procurement.

A cost analysis may not be necessary if one can establish price reasonableness on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

Price Analysis

A price analysis will be used in all instances to determine the reasonableness of a proposed contract price, including contract modifications. It is used when price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulations. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts.

Basic Standard for Cost or Price Analysis

Costs or prices will be consistent with reasonable and allowable cost principles. The offeror will certify that to the best of its knowledge and belief, the cost data are accurate, complete, and current at the time of agreement on price. Contracts or modifications

negotiated in reliance on data provided by the offeror may be adjusted if it is discovered data is not accurate, complete, or current.

Profit

The subrecipient must negotiate profit 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.

The following factors will be considered in determining whether income or profits are excessive:

1. Complexity of work to be performed;
2. The risk borne by the contractor;
3. The contractor's investment;
4. The amount of subcontracting;
5. The quality of the contractor's record of past performance;
6. Industry profit rates in the surrounding geographical area;
7. Market conditions in the surrounding geographic area.

CONTRACT PROVISIONS:

Clauses Required by the Uniform Guidance

While the Uniform Guidance addresses numerous provisions for inclusion in contracts funded with Federal funds, the following are specifically applicable to contracts funded by pass-through funds from CSS. Subrecipients must ensure that all of the following which are applicable are included in any procurement funded through CSS subawards:

- Contracts for more than the simplified acquisition threshold currently set at **\$150,000**, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts **in excess of \$10,000** must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p.339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part

60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- Debarment and Suspension (Executive Orders 12549 and 12689)--A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp, p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension. " The Excluded Parties List System in SAM 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 12549. (Note: This clause is required for all contracts in **excess of \$25,000.**)
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)--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. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Clauses Subrecipient Are Required to Include in Lower Tier Subawards and Subcontracts

Retention requirements for records. Financial records, supporting documents, statistical records, and all other records pertinent to the subaward must be retained for a period of three years from the date of submission of the final expenditure report to the County of Los Angeles. The records must be retained longer under the following conditions

- If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- When the subrecipient is notified in writing by the County of Los Angeles, the State awarding agency, the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

Access to records. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, the State awarding agency, and the County of Los Angeles, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the subaward, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

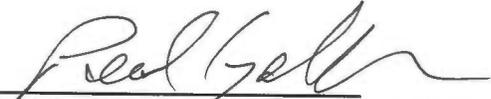
Additional clauses required by the County will be included in RFP and IFB documents as well as subaward documents.

ACTION:

CSS and its subrecipients shall follow this policy. This policy shall remain in effect until such time that a revision is required.

INQUIRIES:

If you have any questions regarding this Directive, please contact Carol Domingo Stephen at (213) 639-6339 or CDomingoStephen@css.lacounty.gov.



PAUL GOLDMAN, Assistant Director
Contracting Services