

APPENDIX G

Bid and Contract Documents for Material / Supplier Contracts

- Advertisement
- Instruction to Bidders
- General Contract Conditions
- Certification Regarding Lobbying

All contractors, service providers, including Councils of Government (COGs) and subcontractors, must have an active registration with the System for Award Management (www.SAM.gov) AND have been cleared (not suspended or debarred) prior to any formal action authorizing the award of a contract to the contractor (examples of formal action include but are not limited to, authorizing resolution, authorizing ordinance, Council /Commissioners Court approval of award, contract execution, etc.). See Chapter 5 for more information on SAM registration.

Materials/Equipment

Advertisement and Invitation for Bids

The (name of Grant Recipient) will receive bids for (brief description of materials and or equipment) until (time) on (day and date) at (address of where bids are to be delivered). The bids will be publicly opened and read aloud at (time) on (day and date) at (address of bid opening location).

Bids are invited for the several items and quantities as follows:

1. (List a brief description of the required items and quantities here.)
- 2.
- 3.

Bid/Contract Documents, including Technical Specifications are on file at (address(s) at which specifications can be obtained).

A bid bond in the amount of 5 percent of the bid issued by an acceptable surety is required with each bid for those contracts that exceed \$100,000. A certified check or bank draft payable to the (Grant Recipient's name) or negotiable U.S. Government Bonds (as par value) may be submitted in lieu of the Bid Bond.

The (name of Grant Recipient) reserves the right to reject any or all bids or to waive any informalities in the bidding.

Bids may be held by (name of Grant Recipient) for a period not to exceed 30 days from the date of the bid opening for the purpose of reviewing the bids and investigating the bidders' qualifications prior to the contract award.

(name of Grant Recipient) (contracting officer), (title) (date)

All contractors and/or subcontractors who are debarred, suspended or otherwise excluded from or ineligible for participation on federal assistance programs may not undertake any activity in part or in full under this project.

Materials/Equipment

Instructions to Bidders

1. Interpretations or Addenda

No oral interpretations will be made to any bidder. Each request for an interpretation shall be made in writing to (Grant Recipient or engineer) no less than seven (7) days prior to the bid opening. Each interpretation made will be in the form of an Addendum to the contract documents and will be distributed to all parties holding contract documents no less than seven (7) days prior to the bid opening. It is, however, the bidder's responsibility to make inquiry as to any addenda issued. All such addenda shall become part of the contract documents and all bidders shall be bound by such addenda.

2. Alternate bid items

No alternate bids or bid items will be considered unless they are specifically requested by the technical specifications.

3. Bids

- a) All bids must be submitted on the forms provided and are subject to all requirements of the Contract Documents, including the Drawings.
- b) All bids must be regular in every respect and no interlineation, excisions or special conditions may be made or included by the bidder.
- c) Bid documents, including the bid, and the bid bond shall be sealed in an envelope and clearly labeled with the words "Bid Documents," the project number, name of bidder and the date and time of bid opening.
- d) The Grant Recipient may consider as irregular any bid on which there is an alteration of or departure from the bid form and, at its option, may reject any irregular bid.
- e) If a contract is awarded, it will be awarded to a responsible bidder on the basis of the lowest/best bid and the selected alternate bid items, if any.

4. Bid Modifications Prior to Bid Opening

Any Bidder may modify its bid in writing at any time prior to the scheduled closing time for receipt of bids, provided such modification is received by the Grant Recipient prior to the bid closing time. The modification should not reveal the bid price but should provide the addition, subtractions or other modifications so that the final prices or terms will not be known by the Grant Recipient until the sealed bid is open. Likewise, any Bidder may modify a bid by submitting a supplemental bid in person prior to the scheduled closing time for receipt of bids. Such supplemental bid should mention only additions or subtractions to the original bid so as to not reveal the final prices or terms to the Grant Recipient until the sealed bid is open.

5. Bid Bond

A bid bond in the amount of 5% of the bid issued by an acceptable surety is required with each bid for contracts that exceed \$100,000. A certified check or bank draft payable to the Grant Recipient or negotiable U.S. Government Bonds (as par value) may be submitted in lieu of the Bid Bond.

6. Corrections

Erasures or other corrections in the bid must be noted over the signature of the bidder.

7. Time for Receiving Bids

Bids received prior to the advertised hour of opening shall be kept securely sealed. The officer appointed to open the bids shall decide when the specified time has arrived and no bid received thereafter will be considered.

8. Opening of Bids

The Grant Recipient shall, at the time and place fixed for the opening of bids, publicly open and read aloud each bid, irrespective of any irregularities therein.

9. Withdrawal of Bids

Bidder may withdraw the Bid before the time fixed for the opening of Bids by communicating its purpose in writing to the Grant Recipient. Upon receipt of such notice, the unopened Bid will be returned to the Bidder. The bid guaranty of any bidder withdrawing his bid in accordance with the above will be returned promptly.

10. Award of Contract/Rejection of Bids

The contract will be awarded to the responsive, responsible Bidder submitting the lowest/best bid. The bidder selected will be notified at the earliest possible date. The Grant Recipient reserves the right to reject any or all bids where such rejection is in its interest.

11. Execution of Agreement

The failure of the successful bidder to execute the agreement and supply the required bonds thirty (30) days from the date of the notice of award, or within such extended period as the Grant Recipient may grant shall constitute a default and the Grant Recipient may, at its option either award the contract to the next lowest responsible bidder, or re-advertise for bids. In either case, the Grant Recipient may charge against the bidder the difference between the amount of the bid, and the amount for which a contract is subsequently executed irrespective of whether this difference exceeds the amount of the bid bond. If a more favorable bid is received through re-advertisement, the defaulting bidder shall have no claim against the Grant Recipient for a refund.

12. Equal Employment Opportunity

Bidder is required to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, sexual identity, gender identity, or national origin, and must comply with other civil rights requirements.

13. Certification Regarding Lobbying –

Contractors who apply or bid for an award of \$100,000 or more shall provide the required certification 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 an Federal contract, grant or any other award covered by 31 USC § 1352.

Materials/Equipment

General Contract Conditions

1. Materials and Workmanship

- a) Unless otherwise specifically provided for in the Technical Specifications, all materials and articles utilized in the work shall be new and the best grade available. Where equipment, materials, or articles are referred to in the Technical Specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.
- b) The successful bidder shall furnish to the Grant Recipient for approval the manufacturer's detailed specifications for all mechanical, other special equipment and all materials or articles, together with full information as to type, performance characteristics, and all other pertinent information as required.
- c) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the Technical specifications shall have full force and effect as though printed therein.

2. Samples and Tests

- a) Approval of any materials shall be general only and shall not constitute a waiver of the Grant Recipient's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval.
- b) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:
 - The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
 - The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
 - The Contractor shall assume all costs of testing materials offered in substitution for those found deficient; and
 - The Grant Recipient will pay all other expenses.

3. Compliance with Clean Air and Federal Water Pollution Control Acts [for contracts > \$150K]

- a) Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et. seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1387. Violations must be reported to the awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- b) Materials shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

4. Equal Opportunity Clause

- a) The Contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with Community Development Block Grant funds the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct

as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- b) The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

6. Age Discrimination Act of 1975. The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

7. 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." SAM Exclusions 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.

8. Access to Records

The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, and the Texas Department of Agriculture (TDA), and the City/County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Contractor which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts and to closeout the City's/County's TxCDBG contract with TDA.

9. Retainage of Records [if materials are paid with CDBG funds]

Grantees or subgrantees must retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

10. Termination for Cause *[for Contracts > \$10K]*

If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City/County shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City/County, be turned over to the City / County and become the property of the City / County. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City/County for damages sustained by the City/County by virtue of any breach of contract by the Contractor, and the City/County may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.

11. Termination for Convenience of the City/County.*[for Contracts > \$10K]*

City/County may at any time and for any reason terminate Contractor's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by City/County; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against City/County for any additional compensation or damages in the event of such termination and payment.

11. Liquidated Damages

Since the actual damages for any delay under this contract are impossible to determine, the Contractor shall be liable for and shall pay to the Grant Recipient the sum of (_____) Dollars (\$ _____) as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for delivery.

*[See below. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3. Therefore, only include the following Section 3 language if this Contract for materials is greater than \$100,000 **and** the contract for materials includes the installation of the materials:]*

12. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns (see comment above)

a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

d) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

39. [For Contracts that exceed \$100,000] Anti-Lobbying

Contractor shall file the required certification: The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Certification Regarding Lobbying

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995).

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Printed Name and Title of Contractor's Authorized Official