

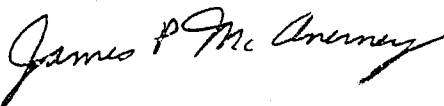
RESOLUTION NO. 07-03

A RESOLUTION OF GOVERNING BODY ADOPTING AND PROVIDING FOR
STANDARDS FOR PROCUREMENT, BIDDING AND CONTRACT AWARDS

WHEREAS, City of Wathena, Doniphan County, Kansas has applied for a grant to be made or insured by the United States of America acting through U. S. Department of Agriculture, Rural Development (herein called the Government) for the construction of facilities to be owned and operated by the City of Wathena and the Government's regulations require that the City of Wathena adopt standards: (a) relating to the conduct of its officers, employees, and agents in contracting and in expending loan funds and (b) establishing procurement and contracting procedures;

Now, Therefore Be It Resolved That City of Wathena, Doniphan County, Kansas does hereby adopt the standards of conduct and procurement procedures set forth in those regulations of USDA, Rural Development appearing in Title 7, Code of Federal Regulations, Section 1942.18 (4) thru (K), provided however that in those instances where funds derived from loans made or insured by, or grants made by, the Government are not involved, prior consent or approval of the Government as provided in such regulations shall not be required.

This resolution adopted by the City Council of City of Wathena, Doniphan County, Kansas this 5th day of November, 2007.



James P. McAnerney, Mayor

ATTEST:

(CITY SEAL)



Jim Richardson, City Clerk

(i) Owner's contractual responsibility. This subpart does not relieve the owner of any contractual responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the local, State, or Federal authority as may have jurisdiction.

Start

(j) Owner's procurement regulations. Owner's procurement regulations must comply with the following standards: (Revised 3-1-88, SPECIAL PN.)

(1) Code of conduct. Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Rural Development funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Rural Development funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(i) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

(ii) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(2) Maximum open and free competition. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the

RD Instruction 1942-A

§1942.18 (j) (2) (Con.)

owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. For a water or waste disposal facility, Rural Development shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such a facility. If Rural Development determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, Rural Development shall provide such applicant or borrower with a comprehensive justification for such a determination. The justification will be documented in writing. (Revised 3-1-88, SPECIAL PN.)

(3) Owner's review. Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(4) Solicitation of offers, whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall 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, shall 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 equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors shall be clearly stated.

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(5) Small, minority, and women's businesses and labor surplus area firms.

(i) Affirmative steps should be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(A) Include qualified small and minority businesses on solicitation lists.

(B) Assure that small and minority businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(D) Where the requirement permits, establish delivery schedules which will encourage participation by small and minority businesses.

(E) Use the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce.

(F) If any subcontracts are to be let, require the prime contractor to take the affirmative steps in paragraphs (j) (5) (i) (A) through (E) of this section.

(ii) Owners shall take similar appropriate affirmative action in support of women's businesses.

(iii) Owners are encouraged to procure goods and services from labor surplus areas.

(iv) Owners shall submit a written statement or other evidence to Rural Development of the steps taken to comply with paragraphs (j) (5) (i) (A) through (F), (j) (5) (ii), and (j) (5) (iii) of this section.

(6) Contract pricing. Cost plus a percentage of cost method of contracting shall not be used.

(7) Unacceptable bidders. The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(i) An engineer or architect as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

- (ii) Any firm or corporation in which the owner's architect or engineer is an officer, employee, or holds or controls a substantial interest;
- (iii) The governing body's officers, employees, or agents;
- (iv) Any member of the immediate family or partners in paragraphs (j) (7) (i), (j) (7) (ii) or (j) (7) (iii) of this section; or
- (v) An organization which employs, or is about to employ, any person in paragraph (j) (7) (i), (j) (7) (ii), (j) (7) (iii) or (j) (7) (iv) of this section.

(8) Contract award. Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred. (Revised 4-11-89, SPECIAL PN)

(k) Procurement methods. Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(1) Small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Competitive sealed bids. In competitive sealed bids (formal advertising), sealed 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 lowest, price and other factors considered. When using this method the following shall apply:

- (i) At a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of qualified sources. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (j)(4) of this section.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest.

(v) Any or all bids may be rejected by the owner when it is in their best interest.

(3) Competitive negotiation. In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(4) Noncompetitive negotiation. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following: (Revised 3-1-88, SPECIAL PN.)

- (i) The item is available only from a single source; or
- (ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or
- (iii) After solicitation of a number of sources, competition is determined inadequate; or
- (iv) No acceptable bids have been received after formal advertising; or
- (v) The procurement of architectural/engineering and other professional services; or
- (vi) The aggregate amount does not exceed \$50,000. (Added 3-1-88, SPECIAL PN.)

(5) Additional procurement methods. Additional innovative procurement methods may be used by the owner with prior written approval of the Rural Development National Office.

End

(1) Contracting methods. The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with paragraph (j) (7) of this section. Procurement methods which combine or rearrange design, inspection or construction services (such as design/build or construction management) may be used with Rural Development written approval. If the contract amount exceeds \$100,000, National Office prior concurrence must be obtained under section 1942.9(b) of this subpart. This method cannot be used when an Rural Development grant is involved. The owner should request Rural Development approval by providing at least the following information to Rural Development: