



**TOWN OF TAOS
RESOLUTION 09-21**

PROCUREMENT POLICY FOR CDBG PROJECTS

The Town Council, the Governing Body of the Town of Taos, hereby enacts the following resolution setting forth the Town's procurement policies for Community Development Block Grant Projects.

WHEREAS, the Town of Taos has been, and wishes to continue to be, a qualified Grantee eligible to receive funding under the State-Federal Community Development Block Grant (CDBG) program; and

WHEREAS, the State's Department of Finance and Administration (DFA) has set forth certain criteria and requirements for CDBG Grantees; and

WHEREAS, the requirements that DFA has promulgated in order for local governments in New Mexico to be qualified as potential CDBG Grantees include a requirement that each such local government adopt annually by resolution a procurement policy for CDBG projects; and

WHEREAS, the Town, in applying for and administering CDBG grants, must comply with requirements unique to the CDBG program promulgated by DFA and consonant with federal law and regulations and must comply with all applicable requirements of the New Mexico Procurement Code (NMSA 1978, Sections 13-1-28 through 13-1-199) as well as other pertinent requirements of state law; and

WHEREAS, due to the unique nature of the resulting set of procurement requirements for CDBG projects, the Council deems it most appropriate and efficient to adopt a CDBG procurement policy separate from its general procurement policy;

NOW, THEREFORE, BE IT RESOLVED, that the Town of Taos Council hereby adopts the following as its CDBG Procurement Policy:

A. GENERAL PROVISIONS

1. Incorporation by Reference

a. All applicable provisions of the New Mexico Procurement Code NMSA 1978, Sections 13-1-28 through 13-1-199, are hereby incorporated into this policy by this reference.

b. All applicable requirements duly promulgated by DFA for CDBG grants and projects, and any applicable federal government regulatory requirements for such grants and projects, are hereby incorporated into this policy by this reference.

c. All applicable provisions of the Town's current general Procurement Policy are hereby incorporated by this reference.

d. Any conflict between this policy and the Procurement Code or other applicable state or federal legal or regulatory requirements are to be resolved in favor of the state or federal requirements. Any conflict between this policy and the Town's general Procurement Policy are to be resolved in favor of this policy.

2. Code of Conduct

Elected officials, staff or agents of the Town are prohibited from personally benefiting from CDBG procurement.

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

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

Any alleged violations of the foregoing standards of conduct shall be referred to the District Attorney for the Eighth Judicial District. An employee, official or agent who violates the foregoing provisions shall be subject to appropriate disciplinary or other administrative action.

B. **PROCUREMENT PROCESS IN GENERAL**

1. Initial Review; Selection of Procurement Method

The Town's designated purchasing officer shall review each proposed procurement that involves the use of CDBG funds with a view toward avoiding the purchase of unnecessary or duplicative items. For procurements chosen to go forward, the purchasing officer shall select the procurement method that is most appropriate for the particular procurement involved (small purchase, competitive bids, competitive proposals, qualifications-based proposals, purchase under existing GSD contract, etc.) Where more than one method could be chosen, the purchasing officer shall seek the most economical method that best meets the Town's needs. Procurement requirements may not be artificially subdivided so as to create separate contracts that can be classified as small purchases.

2. Affirmative Action

The purchasing officer or agent shall take affirmative steps to assure that small and minority firms and women's businesses are solicited wherever they are potential qualified sources. The purchasing officer or agent shall also consider the feasibility of dividing total requirements into smaller tasks or quantities, or setting delivery schedules in such a way as to facilitate participation by small and minority firms and women's businesses, when permitted.

3. Basis of Payment

The basis of payment (fixed price, unit price, hourly rate, etc.) shall be appropriate to the specific procurement and spelled out in any invitation for bids or request for proposals and must be specified in the final contract between the Town and a contracting party. Cost plus percentage of cost contracts are specifically prohibited where CDBG funds are to be used.

4. Necessity for a Written Contract

Whatever procurement method is used, a written contract signed by the Town and the Contractor is necessary and must be in place before the Town is under an obligation to pay for work done.

5. Flow Chart

A flow chart of the procurement process for CDBG-funded projects is attached hereto as Attachment A.

C. **SMALL PURCHASES** (Procurement Code Sec. 13-1-125)

1. When the Small Purchase Procedure Can be Used.

The small purchase procedure can be used to procure services, construction or items of tangible personal property having a value of not more than \$20,000 not including any applicable gross receipts tax, and may also be used to procure professional services (except those of landscape architects and surveyors) having a value of not more than \$50,000 not including any applicable gross receipts tax. Projects shall not be artificially divided in order to allow the small purchase procedure to be used.

2. Obtaining Quotes.

To use the small purchase procedure for contracts to be funded by CDBG monies, the Town official responsible for the procurement must obtain price or rate quotations by phone or in writing from a minimum of three sources and document the businesses contacted and the prices quoted. In order to obtain comparable price quotations, the Town official responsible for the procurement should describe the type of service, construction, or goods that the Town seeks to obtain, as well as the scope of work and proposed basis of payment, in reasonable detail.

3. Basis of Selection.

The Town shall select the business whose services, construction or goods are most advantageous to the Town, including but not limited to cost.

4. Contract.

The Town shall enter into a written contract with the business selected setting forth, among other things, the maximum compensation, the basis of compensation, the term of the contract, delivery schedule, and scope of work.

D. **COMPETITIVE SEALED BIDS** (Procurement Code Sec. 13-1-102 to 110)

1. Applicability

Section 13-1-102 of the Procurement Code requires competitive sealed bids where other methods of procurement (such as small purchases and competitive sealed proposals) do not apply. This procedure is used when detailed specifications can be prepared for the goods or services to be procured and the primary basis for award is cost.

2. Notice.

An invitation for bids procedure is initiated by the Town publishing an Invitation for Bids or a notice thereof at least 10 calendar days before bids are to be opened in at least one newspaper of general circulation in the Taos area and sending copies to businesses that have indicated in writing their interest in bidding for the type of service, construction, or goods involved. (Procurement Code Sec. 13-1-104.) The invitation for bids should state that CDBG funding is involved.

3. Selection Criteria.

All criteria to be used for selection must be stated in the Invitation for Bids. Specifications should be clear and detailed.

4. Opening of Bids; Award

Bids shall be opened publicly, recorded, and the award made to the lowest responsible bidder. The term “responsible bidder” is defined as, “a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.” (Procurement Code Sec. 13-1-82.) A “responsive bid” is “a bid which conforms in all material respects to the requirements set forth in the invitation for bids [including] price, quality, quantity or delivery requirements.” (Procurement Code Sec. 13-1-84.) Therefore, the lowest bidder may or may not be the lowest responsible bidder.

5. Contract.

The Town must enter into a written contract with the firm selected in order to proceed with the production and delivery of the services, construction or goods solicited. The contract must formalize, among other things, the term of the contract, the scope of work, delivery schedule, and compensation.

6. Cancellation; rejection.

An invitation for bids may be cancelled or any or all bids rejected when it is in the best interests of the Town. Any such determination must be documented in writing with the business reasons for the cancellation or rejection stated. (Procurement Code Sec. 13-1-131.)

E. **COMPETITIVE SEALED PROPOSALS** (Procurement Code Sec. 13-1-111 to 13-1-117.)

1. Applicability

Competitive sealed proposals are used when cost is not the only factor in the selection. This includes most professional services, but services of architects, engineers, landscape architects and surveyors are required to be selected using the special Competitive Sealed Qualifications-Based Proposal procedure set forth in Section F, below. Competitive sealed proposals are not to be used for construction services but may be used to select a consultant to provide local CDBG administrative or housing rehabilitation services, appraisals or expert testimony.

2. Notice

Requirements for notice and publication of a request for proposals or a notice thereof are the same as requirements for notice and publication of an invitation for bids or a notice thereof. See D-2 above.

3. Request for Proposals (RFP) (Procurement Code Sections 13-1-111 through 13-1-117.1.

The RFP should clearly define the services or goods to be procured and must include a scope of work.

The RFP must state the evaluation criteria to be used and their relative weight. The criteria may include cost and should also include other factors.

The RFP must state the name and telephone number of the Town contact person and the number of copies of a proposal required.

The RFP should state that the project is funded by CDBG money and subject to applicable CDBG requirements.

4. Evaluation of Proposals; Negotiations

The Town should establish an evaluation committee to review and rank proposals in accordance with the criteria stated in the RFP. Reviews and rankings should be in writing. Offerors submitting proposals may be given an opportunity for negotiation and revision of their proposals prior to award for the purpose of the Town obtaining best and final offers.

5. Award

The award shall be made to the responsible offeror whose proposal is the most advantageous to the Town, taking into consideration the evaluation factors set forth in the RFP, including but not limited to price.

6. Contract.

The Town must enter into a written contract with the firm selected in order to proceed with the production and delivery of the services or goods solicited. The contract must formalize, among other things, the term of the contract, the scope of work, delivery schedule, and compensation.

7. Cancellation; rejection.

A request for proposals may be cancelled or any or all proposals rejected when doing so is in the best interests of the Town. Any such determination must be documented in writing with the business reasons for the cancellation or rejection stated. (Procurement Code Sec. 13-1-131.)

F. COMPETITIVE SEALED QUALIFICATIONS-BASED PROPOSALS
(Procurement Code Sections 13-1-117.2 through 13-1-124.)

1. Applicability

Professional services of architects or engineers in excess of \$50,000 (not including taxes) and professional services of landscape architects and surveyors in excess of \$10,000 (not including taxes).

2. Procedure

The procedures for competitive sealed qualifications-based proposals are the same as the procedures for requests for proposals (Section E above) except for the following:

a. Price is excluded as an evaluation factor in the request for proposals and in selecting the most qualified offeror.

b. The following must be included in the RFP as evaluation factors: (1) specialized design and technical competence; (2) capacity and capability of the business; (3) past record of performance on contracts with government agencies or private industry; (4) proximity to or familiarity with the area in which the project is located; (5) the volume of work previously done for the Town that is not 75% complete. (See Procurement Code Section 13-1-120.) Note: Amount of design work produced in New Mexico is not allowed as a factor on federally funded projects.

c. Once the most qualified offeror has been selected (on the basis of factors other than cost), the Town shall obtain from that firm its price and cost data.

d. After obtaining the most qualified firm's price and cost data, the Town and the firm shall negotiate a fee for the services to be provided.

e. If a fair and reasonable fee cannot be agreed upon, then the Town shall commence negotiations with the second most qualified firm, then, if those are unsuccessful, with the third most qualified, and so on.

f. Professional Technical Advisory Assistance: The Procurement Code provides that if a local public body (such as the Town) does not have on staff a licensed professional engineer, surveyor, architect or landscape architect, it shall have appointed to it or have the appointment waived by the appropriate New Mexico professional society, an individual to serve as a professional technical advisor. Professional technical

advisors shall be obtained through the Professional Technical Advisory Board, a consortium of the relevant professional societies in New Mexico. (See Procurement Code Section 13-1-117.2.) The professional technical advisor may assist the Town with developing an RFP, giving public notice, evaluating proposals, selecting firms, and contract negotiation.

G. ADMINISTRATIVE OR REHABILITATION CONSULTANT

1. Applicability

If the Town requires the use of a consultant to assist with the administration of the CDBG program or the assistance of a professional rehabilitation consultant, the Town must procure such services through the Competitive Sealed Proposals (RFP) process described in Section E, above.

2. Contract Terms.

An administrative contract must contain the following provisions:

- a. Effective and termination dates.
- b. Names and addresses of parties and liaison persons.
- c. Authority of Town to enter contract and source of funds.
- d. Conditions under which the contract may be terminated and remedies for breach.
- e. Detailed scope of work.
- f. Time of performance and completion including milestones if applicable.
- g. Description of materials or services to be provided by both parties.
- h. Method of compensation including fee, payment schedule and maximum amount payable. Payment cannot be made in advance of work.
- i. State and federal standard provisions: Executive Order 11246 clause; Title VII clause; access to records statement; conflict of interest clause; Section 3 statement pertaining to Housing and Urban Development Act of 1968; Section 109 clause pertaining to the Housing and Community Development Act of 1974; Rehabilitation Act of 1974, Section 504 clause, concerning handicapped persons; Age Discrimination Act of 1975 clause.

H. MAINTAIN PROCUREMENT FILES.

Procurement files for all CDBG contracts must be maintained and must, at a minimum contain the following documents showing, among other things, that the procurement was open, fair and competitive: Please see Attachment “A”.

I. RETENTION OF RECORDS.

The Town shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Grant Agreement period, the purpose of undertaking for which such funds were used, the amount and nature of all

contributions from other sources, and such other records as the Local Government Division shall prescribe. Such records shall be preserved for a period of not less than ten (10) years following project close-out.

J. SPECIAL REQUIREMENTS FOR PUBLIC WORKS PROJECTS

1. Applicability.

The Public Works Minimum Wage Act (NMSA 13-4-10 through 13-4-17) provides that any contract entered into by the Town in excess of \$60,000 for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires the employment of mechanics or laborers or both. (NMSA Sec. 13-4-11.A.)

2. Requirements.

Any such public works contract must contain a provision stating the minimum wages to be paid to various classes of laborers and mechanics based upon the prevailing wage determined by the Director of the Labor and Industrial Division of the Department of Workforce Solutions, and a provision that the laborers and mechanics shall be paid at least once per week and without unlawful deduction or rebate, the full amount accrued at the time of payment. (NMSA, Sec. 13-4-11.A.)

In order to submit a bid or a response to a request for proposals valued at more than \$50,000, or to be considered for award of any portion of a public works project greater than \$50,000 for a public works project subject to the Public Works Minimum Wage Act, a prime contractor or subcontractor must be registered with the labor and industrial division of the Department of Workforce Solutions. (NMSA Sec. 13-4-13.1.A.)

Bidding documents issued by the Town for such public works projects, including invitations to bid (IFB's) and requests for proposals (RFP's), must include a clear notification that each contractor (prime contractor or subcontractor) is required to be registered as required by Section 13-4-13.1. (NMSA, Sec. 13-4-13.1.A.)

The Town shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself. (Section 13-4-13.1.B and Section 13-1-105.A.) In effect, this means that a bid or proposal, in order to be deemed responsive, with respect to a covered public works project, must contain proof by the prime contractor bidder that it is registered with the Labor and Industrial Division.

A bid submitted by a registered prime contractor that includes any subcontractor that is not registered in accordance with Section 13-4-13.1 may be considered for award following substitution of a registered subcontractor for any unregistered subcontractor. Section 13-1-105.A.

RESOLVED, in Session, this 28th, day of April 2009, at the Special Meeting of the Town Council, by the following vote:

Councilmember Rudy C. Abeyta	<u>yes</u>
Councilmember A. Eugene Sanchez	<u>yes</u>
Councilmember Amy J. Quintana	<u>yes</u>
Councilmember Michael A. Silva	<u>yes</u>

TOWN OF TAOS

Darren M. Cordova, Mayor

ATTEST:

Renee Lucero, Town Clerk

APPROVED AS TO FORM:

Allen Ferguson, Jr., Town Attorney