

GUIDELINES FOR FTA FUNDED PROCUREMENTS

Springfield Redevelopment Authority- June 2010

Revised June 2012

In accordance with the U.S. Department of Transportation, Federal Transit Administration (FTA) requirements, the Springfield Redevelopment Authority (SRA) has adopted these procurement policies and procedures for the acquisition goods and services funded through FTA capital or operating grant programs. These Guidelines shall apply to all procurements undertaken by the SRA utilizing FTA originating funding.

1. Applicable Requirements Grantees awarded FTA funds must have procurement policies and processes in compliance with FTA Third Party Contracting Requirements identified in FTA Circular 4220.1 F and all applicable state and local laws. Therefore, as a recipient of any FTA funding the SRA will comply with all applicable requirements under FTA program or contract administration regulations including:

Master Agreement

<http://www.fta.dot.gov/documents/15-Master.pdf>

Best Practices Procurement Manual

http://www.fta.dot.gov/documents/BPPM_fulltext.pdf

Circular 4220.1F. Third Party Contracting Requirements

http://www.fta.dot.gov/documents/FTA_Circular_4220.1F_-_Finalpub1.pdf

Circular 5010.1D Grant Management Guidelines

http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf

Circular 9030.1D Urbanized Area Formula: Program Guidance and Application Instructions

http://www.fta.dot.gov/documents/Proposed_FTA_Circular_9030_1D_9-24-09.pdf

Circular 9030 Urbanized Area Formula Program

http://www.fta.dot.gov/laws/circulars/leg_reg_4125.html

Circular 9300.1B Capital Investment Program Guidance and Application Instructions

http://www.fta.dot.gov/documents/Final_C_9300_1_Bpub.pdf

2. Administration The SRA will maintain a contract administration system to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts. The SRA shall designate a Contract Officer to be responsible for compliance with these Guidelines.

3. Conflict of Interest. In order to promote governmental integrity and to guard against even the appearance of impropriety, all SRA and City of Springfield employees are required to comply with Chapter 268A of the General Laws, which governs conduct as a public official or employee. In general the statute prohibits public employees from:

- Asking or accepting *anything* (regardless of its value), if it is offered in exchange for your agreeing to perform or not perform an official act.
- Asking or accepting anything worth \$50 or more from anyone with whom you have official dealings.
- Hiring, promoting supervising and or otherwise participating in the employment of your immediate family or your spouse's immediate family.
- Taking any type of official action that will affect the financial interests of your immediate family or your spouse's immediate family.
- Taking any type of official action affecting your own financial interest, or the financial interest of a business partner, private employer, or any organization for which you serve as an officer, director or trustee.
- Having more than one job with the same municipality or county, or more than one job with the state, unless you qualify for an exemption.
- Except under special circumstances, having a financial interest in a contract with your public employer.
- Representing anyone but your public employer in any matter in which your public employer has an interest.
- Disclosing confidential information, data or material which you gained or learned as a public employee.
- Unless making proper, public disclosure in writing -- including all the relevant facts -- taking any action that could create an appearance of impropriety, or could cause an impartial observer to believe your official actions are tainted with bias or favoritism.
- Using your official position to obtain unwarranted privileges, or any type of special treatment, for yourself or anyone else.
- Using public resources for political or private purposes.
- After leaving public service, taking a job involving public contracts or any other particular matter in which you participated as a public employee.

Further, in accordance with Chapter 121B of the General Laws each member of the SRA, and any person, not an employee, who performs professional services for the SRA on a part-time, intermittent or consultant basis, such as those of architect, attorney, engineer, planner, or construction, financial, real estate or traffic expert, are considered a special municipal employee and subject to the requirements of Chapter 268A of the General Laws.

Detailed information about the conflict of interest law, including educational advisories, summaries of the law and disclosure forms is available from the Massachusetts Ethics Commission:

<http://www.mass.gov/?pageID=ethhomepage&L=1&L0=Home&sid=leth>

4. **Procurement Records.** The SRA shall maintain all pertinent procurement records in a procurement file. The records are placed in a procurement master file and include:

- The rationale for the method of procurement.
- Selection of contract type.
- Reasons for contractor selection or rejection; and
- The basis for the contract price.

Where appropriate, the *procurement file* shall contain:

- Purchase request, acquisition planning information, and other pre-solicitation documents
- Required internal approvals for award
- Rationale for the method of procurement (negotiations, formal advertising)
- List of sources solicited
- Independent cost estimate
- Description of work/scope of services
- Copies of published notices of proposed contract action
- Copy of the solicitation, all addenda, and all amendments
- Liquidated damages determination
- A summary of each offer or quote

- Contractor's contingent fee representation and other certifications and representations if applicable
- Source selection documentation, if applicable
- Contracting Officer's determination of contractor responsiveness and responsibility
- Cost or pricing data
- Determination that price is fair and reasonable including an analysis of the cost and price data
- Purchase Requisition indicating availability of funding
- Notice of award
- Notice to unsuccessful bidders or offerors and record of any debriefing,
- Record of any protest
- Bid, Performance, Payment, or other bond documents, and notices to sureties
- Required insurance documents, and
- Notice to proceed

5. **Contract Administration Records.** Were appropriate, the contract administration file shall contain:

- Executed contract and notice of award
- Bond-related documents
- Insurance documentation
- Post-award correspondence
- Notice to proceed
- Approvals or disapprovals of waivers and deviations

6.. **Procurement Selection Procedures.** The SRA shall use written selection procedures for procurement transactions as follows:

- Solicitations shall include a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that 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.

- 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 as a means to define the performance or other salient characteristics of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
- Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- Identify the lowest, responsive, and responsible bidder or most advantageous proposer who provides the best value. Contract awards will then be made by the SRA pursuant to their legal authority.

7. **Prequalification of Bidders.** The SRA shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, the SRA shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

8. **Debarment.** The SRA shall ensure to the best of its knowledge and belief that none of its FTA assisted contracts for goods or services involve contractors debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements.

9. **Geographic Preferences.** The SRA shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

10. **Methods of Solicitation.** Methods of solicitation and selection allowed by FTA Circular 4220.1F are outlined in this section. In some instances the solicitation and selection may be

modified by the application of Massachusetts General Laws Chapter 30B *Uniform Procurement Act*.

- Micro-purchase procedures for purchases of \$3,000 or less

****Emergency Purchases.** In the event of an emergency as determined by the Administrator of SRA, in consultation with the PM or OPM, where there is an imminent threat to life, health or property, and there is insufficient time to conduct a procurement in accordance with the procedures described in this manual, any item to be purchased or services on work to be performed may be authorized.*

An emergency is defined as a real and present threat to life and welfare of the public or an SRA employee, to SRA property, or the provision of transit service, which can reasonably be expected to be alleviated by the purchase in question.

All purchases of products and/or services exceeding \$3,000 will be blinded by a contract.

- Small purchase procedures, relatively simple and informal procedures for contracts less than the Federal simplified acquisition threshold (currently \$100,000).

The SRA Administrator will assign small purchase activities to the SRA staff based on the complexity of the procurement and small purchase procedures. In general, the following responsibilities will apply and can be modified to fit the procurement process under consideration:

- SRA Administrator:
 - Will direct the staff to undertake the procurement and set general guidelines as applicable
 - Grant final approval of the procurement results
- SRA Project manager or Owners Project Manager will:
 - Be responsible for price research, obtaining quotes and related information
 - Cross-check of procurement files to determine procurement is in accordance with small purchase procedures
 - Review of procurement procedures and results
- Owners Project Manager is:
 - Responsible for price research and obtaining quotes
- SRA Fiscal Grant Compliance & Procurement will:
 - Prepare and execute contracts with a copy to the OPM (if applicable)
 - Verify quantity and confirm delivery with OPM

- Assist Administrator, SRA Project Manager and Owners Project Manager in all procurements on federally funded projects.

- Sealed bids(Formal Advertising) where:
 - There is complete, adequate, and realistic specifications or purchase descriptions.
 - Two or more responsible bidders are willing and able to compete.
 - The procurement lends itself to a firm fixed price contract and the selection can be made primarily on the basis of price.
 - No discussion with bidders is needed after the receipt of offers.

- Competitive proposals (Request for Proposals), where:
 - Nature of procurement does not lend itself to sealed bidding
 - More than one source is expected to submit an offer

- Noncompetitive proposal (sole source) procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4220.1F Chapter VI.3.i.(1)(b).

In addition:

- Procurements of designer services, including owners project manager and clerk of the works, shall be made in accordance with the requirements of FTA Circular 4220.1F and MGL Chapter 7 Sections 381/2-O, as applicable.

- Procurements of public building construction services, including the design-bid-build or construction manager at risk (CM at Risk) delivery methods, shall be made in accordance with the requirements of FTA Circular 4220.1F and MGL Chapter 149, as applicable

- Procurements of public works construction services shall be made in accordance with the requirements of FTA Circular 4220.1F and MGL Chapter 30B or MGL Chapter 30 Section 39M, as applicable.

11. **Federal Contract Clauses.** In addition to ensuring adequate and open competition for federally funded purchases of goods or services, FTA funded contracts will include all applicable federal contract clauses including but not limited to:

- American with Disabilities Act
- Buy America
- Drug and Alcohol Testing
- Bus Testing
- Federal Motor Vehicle Safety Standards
- Davis Bacon Labor Standards
- Debarment and Suspension
- Lobbying
- Bonding Requirements

For a comprehensive listing of applicable federal contracting clauses see Appendix C of FTA Circular 4220.1F.

12. **Protest Procedures.** All Protests must be filed and resolved in a manner consistent with the requirements of FTA Circular 4220.1F Third Party Contracting Guidelines and applicable SRA Procurement. Upon request, the SRA will provide a copy of the aforementioned documents.

The following definitions shall apply in connection with this section:

- Interested Party – An actual or prospective offeror whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract. (Interested parties do not include subcontractors or suppliers of an actual or prospective offeror, or joint ventures acting independently of a joint venture.)
- Protest - A written objection or complaint by an interested party to the terms, conditions or form of a proposed procurement or the proposed or actual award of a contract.
- Protestor - An Interested Party that has properly filed a timely Protest.
- Timely Filed Protest - A written document filed by a Protestor that meets the requirements outlined in these Instructions.

Filing of Protest. An interested party wishing to protest a matter involving a proposed procurement or contract award shall file with the SRA Contracting Officer, a written submission covering, at a minimum the following:

- Name and address of the Protestor;
- Its relationship to the procurement sufficient to establish that the Protest is being filed by an Interested Party;
- Identification of the proposed procurement or contract; Description of the nature of the Protest including the specific staff recommendation, SRA Board action, or inaction that is being protested; Factual allegations in the written submission must be supported by an affidavit included with the written submission.
- Identification of the provision(s) of the solicitation, regulations, and/or laws upon which the Protest is based., (i.e. identification of the technical specifications or item of content in the solicitation);
- All documentation supporting the allegations in the Protest; and
- A statement of the specific relief requested.
- Reference to any pertinent court, GAO and agency decisions, which are relied upon in support of the Protest, as well as any contrary authority.

Failure to substantially comply with any of the requirements of this section may be grounds for dismissal of the Protest.

Method and Location of Submission. A Protest may be filed by electronic facsimile (with original copy by express mail) or by any other return receipt means. The SRA is not responsible for lost or otherwise delayed deliveries.

An Appeal must be hand delivered by an authorized representative of the Protestor, by courier, or by confirmed delivery by fax.

All Protests must be filed in writing to:

Springfield Redevelopment Authority
70 Tapley Street
Springfield, MA 01103
Solicitation/Contract No. _____

FAX # 413-787-6173

EMAIL: cmoskal@springfieldcityhall.com

No other location or addressee shall be acceptable.

The Protestor may withdraw its Protest or Appeal at any time before the SRA issues a final decision.

ANY PROTEST, APPEAL OR RENEWAL MUST CLEARLY STATE THAT IT IS EITHER A PROTEST, AN APPEAL OR RENEWAL OF A PROTEST AS APPROPRIATE, TO AVOID DELAY.

The subject line of each letter, email or Fax must read:

Subject: Protest (or Appeal or Renewal of Protest) under Solicitation
No. _____.

The envelope of each letter must be clearly marked, "PROTEST"

Timeliness of Protest Submission. Protests concerning the content of an Bid/Proposal, including all attached documents must be filed with the SRA within ten (10) calendar days after the SRA first advertises the Bid/Proposal and received not later than 4:00 p.m. (local time) on the tenth day. If the tenth calendar day falls on a weekend or legal holiday, the Protest period ends at 4:00 p.m. (local time) the following business day.

Protests concerning a recommendation for award, on any ground not based upon the content of the Bid/Proposal, must be filed with THE SRA by an Interested Party within fifteen (15) calendar days after the SRA mails the recommendation for award notice and received not later than 4:00 p.m. (local time). If the fifteenth calendar day falls on a weekend or legal holiday, the Protest period ends at 4:00 p.m. (local time) the following business day.

The date of filing will be the date of receipt recorded and time stamped by the timekeeper at the address for submission provided above. A Protest not filed within the time limits herein may be rejected without consideration or evaluation.

Response. The Contracting Officer will issue a written decision on a timely Protest concerning the content of a solicitation at least 6 days prior to the date set for bid opening or submission of proposals.

The SRA Contracting Officer will issue a written decision on each substantive issue raised in all timely filed Protests against the making of a contract award no later than forty-five (45) working

days from receipt of the Protest. The Contracting Officer will acknowledge only one Protest on Bid/Proposal content. Any additional information or complaint must be filed within the designated time for Protest submittal and will be considered part of the original Protest.

13. Price/Cost Analysis. In all FTA-funded procurements, a price or cost analysis shall be used to determine the reasonableness of the bid price.

The SRA may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, a cost analysis of the bid price may be conducted.

- “Price analysis” is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.
- “Cost analysis” is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs in order to form an opinion on the degree to which the contractor's proposed costs represent the cost of performance of the contract, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal.

Normally, price analysis may be accomplished through one or more of the following activities:

- The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).
- The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point out apparent gross inconsistencies that should be subjected to greater pricing inquiry.
- The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, to the SRA with discount or rebate arrangements.
- The comparison of proposed prices with estimates of cost independently developed by personnel within the SRA.

- The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

Normally, cost analysis may be accomplished through the following:

- Verify contractor's cost data.
- Evaluate specific elements of costs and project these elements to determine the effect on prices of such factors as:
 - The necessity for certain costs;
 - The reasonableness of amounts estimated for the necessary costs;
 - Allowances for contingencies; and
 - The basis used for allocations of particular overhead costs to the proposed contract.
- When the necessary data is available, compare the contractor's estimated cost with:
 - Actual costs previously incurred by the contractor;
 - The contractor's last prior cost estimate for the same or similar estimates;
 - Current cost estimates from other possible sources; and
 - Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- Forecasting future trends in costs from historical experience:
 - In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
 - In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

- Is the cost allowable in accordance with Federal guidelines?
- Is the cost allocable to the particular project?
- Is the cost reasonable?

If only one bid is received, the sole bidder will be expected to cooperate with the SRA as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

14. Amendments and Change Orders. An amendment is any change to a contract, task order, or work order for any professional services including all architectural and engineering services that alters the terms and conditions of the original document. Any change in the scope of a contract that increases the cost of the contract must follow the Sole Source Procurement procedures. Amendments are formal changes that must be approved at the same signature authority level as the original document.

The SRA shall have the right, based on a clause contained in each contract for construction or the delivery of goods and services, to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. In addition, the SRA shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order.

All amendments and change orders shall be submitted to the SRA by the Project Manager complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.

The SRA will verify all amendments and change orders as to the:

- Appropriateness of the modification of the contract and whether it is unreasonable or not cost effective to do a separate bid for the item under consideration.
- The methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.

The issuance of change orders for each individual contract shall be handled by the SRA.

15. Prohibited or Restricted Contract Types. The following contract types are restricted or prohibited based on the Common Grant Rules:

- Cost Plus Percentage of Cost
- Percentage of Construction Cost
- Time & Material (restricted)

The SRA shall use time and material type contracts only:

- After a determination that no other type of contract is suitable; and
- If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

16. Piggybacking. "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

17. Tag-on. "Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice. "In scope" changes are not tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others.

18. Options. The SRA may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, the SRA may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If the SRA chooses to use options, the requirements below apply:

- Evaluation of Options - The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
- Exercise of Options. The SRA must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

An option may not be exercised unless the SRA has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

19. Contract Term Limitation. The SRA shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.

20. Advance Payments. The SRA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

21. Progress Payments. The SRA may use progress payments provided the following requirements are followed:

- Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- The SRA must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit, bonding or equivalent means to protect the FTA's and the SRA's interests in the progress payment.

22. Liquidated Damages. The SRA may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. In order to obtain liquidated damages, the SRA must suffer an actual loss. The amount of liquidated damages must be reasonable in light of the loss suffered. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the solicitation and contract documents. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

23. Federal Civil Rights Laws & Regulations. The SRA is committed to the sustainability of its integrity through no discriminative procedures, through its adherence of 49 CFR Section 23. The

SRA will adhere to the Title VI of the Civil Rights Act of 1964 through its use of its Title VI Program.

24. Socio-Economic Development. In order to maintain an even and fair bidding ground, outreach to small businesses, minority, woman, and disadvantaged businesses is essential to the elimination of discrimination of large construction projects. Creating goals to outreach to the “disadvantaged” businesses enhance the diversity and socio economic development of the project. Any construction contract that is either funded in whole or in part with U.S. Department of Transportation funds, is subject to the Disadvantaged Business Enterprise (DBE) regulations in 49 CFR Part 26. It should be noted that a contract funded entirely with state or local funds and without any federal funds is not subject to the DBE requirements under this rule.

To obtain a copy of any program plans described in the SRA’s Guidelines for FTA Funded Procurements, please reference www.springfield-ma.gov/planning/sra.html.