

## MILITARY INSTALLATION DEVELOPMENT AUTHORITY

### P4. PROCUREMENT POLICY

#### **P4-1. Purpose.**

The Purpose of this procurement policy ("Procurement Policy") is to set forth a procedure governing purchasing that benefits the Military Installation Development Authority or its subsidiaries ("MIDA") and fulfills the stated statutory purposes for MIDA. It is designed to provide fair and equitable treatment of persons dealing with MIDA procurement, provide for the economical and efficient purchase of goods; and, given the small size of MIDA staff, be easy to administer.

#### **P4-2. Application.**

- (1) This Procurement Policy applies to the Procurement of Supplies, Services, and Construction. If an expenditure of public funds by MIDA meets the definitions in this Procurement Policy then this Procurement Policy applies, irrespective of the source of the funds.
- (2) However, when the Procurement involves the expenditure of federal assistance, grant funds, or payment-in-kind funds from the Falcon Hill Project Area held in trust by MIDA, the Procurement shall be conducted in accordance with any applicable federal law, regulation, or requirement and this Procurement Policy. If there is a conflict between the federal law, regulation, or requirement and this Procurement Policy, the law, regulation, or requirement shall prevail.
- (3) Nothing in this Procurement Policy shall prevent MIDA from complying with the terms and conditions, understanding, or expectation of any appropriation, grant, gift, or bequest that is otherwise consistent with law. Specifically, periodically MIDA receives appropriations from the Utah Legislature. Often these appropriations are for specific purposes within a project area and MIDA will contract directly with the developer or landowner that has already been selected to perform the work or is performing similar work in the project area, without going through the bid or RFP process.
- (4) Generally, the bidding process applies to the Procurement of Supplies and Services (that are not Professional Services) where price is the most important factor. The RFP process applies to Construction and Professional Services where experience, knowledge, and skills are as or even more important than the price. As provided herein, the Procurement Agent may choose to use the RFP process instead of the bidding process for Supplies and non-professional Services. Also, as provided herein, Professional Services may be contracted for through negotiations rather than the RFP process.

### **P4-3. Definitions.**

- (5) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (6) "Business Day" means any weekday, except holidays.
- (7) "Construction" means the process of building, altering, repairing, improving, or demolishing any structure or building or other improvement of any kind to real property. It does not include the routine maintenance or repair of existing structures, buildings, or real property.
- (8) "Contractor" means any person having a contract with MIDA.
- (9) "Employee" means an individual drawing a salary or wages from MIDA.
- (10) "Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (11) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.
- (12) "Procurement" or "Procure" means the buying, purchasing, renting, leasing, or otherwise acquiring of any Supplies, Services or Construction. Procurement does not include the acquisition, leasing, or other long-term interest in real property.
- (13) "Professional Service" means a service that is provided by a Person skilled in the practice of a learned or technical discipline. Providers of professional services often require prolonged and specialized intellectual training and professional attainments in special knowledge as distinguished from mere skills. Disciplines may include but are not limited to accounting, auditing, court reporting, experts in a specialized field, finance, law, materials testing, medicine, and others.
- (14) "Purchasing Agent" means the Chief Operations Officer, unless otherwise designated by the Executive Director.
- (15) "Request for Proposals" or "RFP" means all documents attached or incorporated by reference, utilized for soliciting proposals.
- (16) "Responsible Bidder" or "Responsible Offeror" means a Person who has the capability in all respects to perform fully the procurement requirements and the experience, integrity, reliability, capability, facilities, equipment, and credit which will assure good faith performance.
- (17) "Responsive Bidder" means a Person who has submitted a bid which conforms with all material respects to the requirements set for in an Invitation for Bids.
- (18) "Services" means the furnishing of labor, time, or effort by any Person, including Professional Service, but excluding the work of a construction manager, or Employees.
- (19) "Supplies" means all property, including but not limited to equipment, materials, printing, insurance, but does not include the acquisition, leasing, or other long-term interest in land.

#### **P4-4. Purchasing Agents.**

- (1) Except as otherwise provided herein, the Purchasing Agent shall be responsible for the procurement of all Supplies and Services in accordance with this Procurement Policy. Duties of the Purchasing Agent shall include:
  - (a) Procure or otherwise supervise the procurement of all Supplies and Services required by MIDA;
  - (b) Sell, trade, or otherwise dispose of surplus property belonging to MIDA; and
  - (c) In cooperation with the needs of MIDA, establish and maintain programs for bid specifications, specification development, inspection, review, and acceptance.

#### **P4-5. Authority to use Pre-Approved Forms.**

- (1) The Purchasing Agent is hereby authorized to utilize any necessary forms to Procure Supplies or Services. In addition, the Executive Director, or the Purchasing Agent, when delegated the authority by the Executive Director, has the authority to sign all documents necessary to allow MIDA to make Procurements.

#### **P4-6. Bid or Proposal Evaluation.**

- (1) Generally, bids, proposals and related matters shall be evaluated using the criteria in this Procurement Policy as follows:
  - (a) The Purchasing Agent shall consider the evaluation criteria stated in a bid or proposal package or other solicitation document.
  - (b) The Purchasing Agent shall consider whether a bid, proposal or other offer or submission is responsive to MIDA's request, whether the bidder or offeror is responsible, and whether any element conflicts with other criteria in this Procurement Policy.
  - (c) To be responsive to a bid, proposal or other offer or submission must conform in all material respects to the terms of the solicitation documents. Ministerial errors and other matters in a bid, proposal or other offer or submission will not necessarily render it non-responsive, and the Purchasing Agent shall review such matters and evaluate responsiveness based on any additional reasonable criteria.
  - (d) To be responsive to a bid, a bidder or offeror must have the capability in all respects to fully perform the requirements based upon relevant factors such as:
    - (i) whether the bidder has appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them;
    - (ii) the legal capacity to enter into an agreement with MIDA;
    - (iii) the bidder's skill, ability, and quality of performance;

- (iv) the bidder's character, integrity, reputation, judgment, experience, and efficiency; and
  - (v) the bidder's ability to work cooperatively with MIDA, including, without limitation whether the bidder has previously failed to comply with MIDA contracts or other requirements, nonpayment of sums due, poor working relationships or adversarial actions against MIDA.
- (d) Evaluation of Specific Matters.
- (i) Tie bids occur when identical prices are submitted from Responsive and Responsible Bidders and that price is the low bid. The Purchasing Agent shall make an award in a manner that is beneficial to MIDA.
  - (ii) If MIDA receives only one responsive bid, MIDA may make an award to that bidder if the Purchasing Agent determines the award is fair and reasonable.
  - (iii) The Purchasing Agent may waive any ministerial mistakes found in a bid whether in form or substance. The Purchasing Agent may also waive mistakes by bidders if the mistake does not have a substantial effect on price such as failure to sign the proposal, acknowledgement of receipt of an addendum, or mistakes where intent is evident including typographical errors.
- (2) Bonding.
- (a) Bid and performance bonds for Supplies or Services may be requested at the Purchasing Agent's discretion.
- (3) Right to inspect facility and audit records.
- (a) MIDA may inspect the place of business or worksite of any Contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded.
  - (b) MIDA may audit the books, accounting and any applicable records of any Contractor or subcontractor, when applicable.

#### **P4-7. Prequalification.**

- (1) When the Purchasing Agent deems appropriate, MIDA may prequalify bidders for particular types of Supplies or Services prior to publishing formal proposals.
- (2) Prequalification standards shall be approved by the Purchasing Agent and set forth in the prequalification documents.

#### **P4-8. Methods and Procedures for Procurement.**

- (1) Competitive Sealed Bidding.

- (a) All MIDA Procurements for Supplies or Services, except Professional Services, shall be awarded by use of competitive sealed bidding except as otherwise provided by this Procurement Policy.
- (b) Each competitive sealed bid shall be commenced by the Purchasing Agent issuing an invitation for bid which shall include specifications, all contractual terms and conditions applicable to the Procurement and any other information deemed appropriate by the Purchasing Agent.
- (c) Public notices shall be handled by the Purchasing Agent. Adequate public notice shall be given for a reasonable time and not less than five business days prior to the date set forth for an opening for bids. Such notice may include publication in a newspaper of general circulation or on the MIDA website. The notice shall state the place, date, and time of bid opening.
- (d) All bids shall be accepted and opened by the Purchasing Agent. Bids shall be publicly opened in the presence of one or more witnesses at the time and place designated in the invitation for bids.
- (e) The purchase shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation of bids.
- (f) An invitation for bids may be canceled by the Purchasing Agent in whole or in part when it is in the best interest of MIDA.

(2) Competitive Sealed Proposals.

- (a) The Purchasing Agent may determine that the use of competitive sealed bidding is either not practicable or not advantageous to MIDA; in that case, a Procurement may be made by use of the competitive sealed proposals method.
- (b) Competitive sealed proposals shall be solicited through a Request for Proposals.
- (c) Adequate public notice of the RFP shall be given in the same manner as required for competitive sealed bids.
- (d) The RFP shall state the relative importance of price and other evaluation factors. No criteria may be used in an RFP response evaluation that is not set forth in the RFP.
- (e) The Purchasing Agent may have discussions with responsible offerors and revisions to the RFP may be allowed.
- (f) Award shall be made to the Responsible Offeror whose proposal is deemed by the Purchasing Agent to be the most advantageous to MIDA.
- (g) Cancellation of an RFP may be made by the Purchasing Agent in whole or in part when it is determined in the best interest of MIDA.

(3) Minimal Purchases.

- (a) Minimal purchases are purchases having a total value of not more than \$25,000.00. So long as funds used for such purchases are part of the annual approved budget, the Purchasing Agent may make the purchase without following any formal process set forth in this Procurement Policy. Notwithstanding this exception, the Purchasing Agent shall make a reasonable effort to identify and utilize the lowest responsible provider for the Procurement.
- (4) State Contract Purchasing.

If available to MIDA, any Supplies or Services that are on Utah's State Contract may be purchased without following the bid requirements set forth in this Procurement Policy because an appropriate bid procedure has already been completed.
- (5) Government Agency Purchasing.

When purchasing Supplies or Services from a vendor who has been awarded a bid from another governmental entity within the preceding year and the quoted price available for such items remains the same, MIDA need not follow any other bidding requirements.
- (6) Contracting for Professional Services.
  - (a) MIDA may Procure Professional Services including by not limited to financial, legal, architects, engineers, accountants, physicians, and construction managers and other similar Professional Services without utilizing the formal RFP process.
  - (b) These Professional Services may be Procured as negotiated based on demonstrated competence and qualification at a fair and reasonable price as determined by the Executive Director or Purchasing Agent.
- (7) Contracting with Other Governmental Agencies.

MIDA may contract with a government agency through the use of an interlocal agreement without utilizing the formal procurement procedures set forth in this Procurement Policy.
- (8) Sole Source Procurement.
  - (a) Sole source Procurement may arise when MIDA requires Supplies or Services of a unique or specialized nature, and only one known supplier is reasonably available to meet the need; or when specific parts, accessories, equipment, material, services, proprietary items or other items are necessary to meet MIDA's needs and there are no comparable items reasonably available; or items are procured for resale.
  - (b) MIDA may utilize sole source Procurement in lieu of the formal Procurement requirements set forth in this Procurement Policy when the Purchasing Agent determines that its use is appropriate.
- (9) Procurement to Meet Existing Needs.

- (a) Procurement to meet existing needs may arise when MIDA desires to Procure matching or compatible Supplies or Services when other similar Supplies or Services would not be beneficial to meet MIDA's needs in connection with existing equipment or facilities.
  - (b) MIDA may use existing needs Procurement in lieu of the formal procurement requirements set forth in this Procurement Policy when the Purchasing Agent determines that its use is appropriate.
- (10) Very Specialized or Confidential Services.
- (a) The need to Procure very specialized or confidential Services may arise when MIDA requires Supplies or Services of a specific or highly specialized, confidential or secret nature such as security systems.
  - (b) MIDA may utilize very specialized or confidential Services in lieu of the formal Procurement requirements set forth in this Procurement Policy when the Purchasing Agent determines that its use is appropriate.
- (11) Emergencies, Public Threats, and Unforeseen Conditions
- (a) Notwithstanding any other provision of this Procurement Policy, the Purchasing Agent may make emergency Procurement of Supplies or Services where there exists a threat to public health, welfare or safety or when an unforeseen condition exists that requires Procurement to preserve life, safety, or minimize property damage.

**P4-9. Appeals and Remedies.**

- (1) Any actual bidder or offeror who is aggrieved in connection with the solicitation or award of a contract for Procurement may protest the Procurement by filing a written protest with the Purchasing Agent. The protest shall contain the following information:
  - (a) the protesting party's name, mailing address, email address, daytime telephone number, the signature of the protesting party or the attorney for the protesting party and the date the protest is signed; and
  - (b) a statement of the relief sought and a statement of facts and recitation or reasons and legal authority in support of the protest sufficient to allow for an appropriate review.
- (2) The protest shall be submitted prior to the closing date for receiving bids or proposals unless the protestor did not know of the facts giving rise to the protest, in which case all protests shall be submitted within five business days after the closing date for receiving the bids or proposal;
- (3) MIDA's Purchasing Agent shall review the protest and provide a written determination of the protest. Prior to making the determination, the Purchasing Agent may consult with the Executive Director and legal counsel and the Executive Director may choose to submit it to the MIDA Board for its review and decision.
- (4) The Purchasing Agent's determination shall be considered a final determination.