

Procuring Planning Services: On-Call Contracting Dr. Sally J. Palmer

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Funding Eligibility vs Procurement

- Approved in Work Plan = Eligible for Funding
- Eligible for Funding \neq Procurement Method
 - Use Scope of Work to determine Procurement Requirements of 2 CFR 200.318 through 200.326
 - Qualifications Based Selection (QBS) limited to A&E scopes - 2 CFR 200.320(d)(5)
 - Price/Cost as a “**selection factor**” required if not A&E scope
 - On-Call Contracts = IDIQ (Indefinite Delivery, Indefinite Quantity)
 - Method to Procure still based on Scopes of Work
 - Cannot mix procurement methods for engineering & non-engineering scopes

On-Call Step 1:

What will you be buying?

- “All Planning [**does not**] Result in Construction”
- Desire to hire engineers **≠** Engineering Scope
 - Scope meets regulation definition of *engineering work*?
 - An engineer is not prohibited from performing non-engineering work.
 - Does Scope relate to a specific asset?

Brook's Act

- Engineering & Qualifications Based Selection (QBS)
 - 49 USC 5325(b) and 40 U.S.C. Chapter 11
 - (A) “...as defined by *state law*...**required** to be performed or approved by a [firm/individual] licensed, registered, or certified to provide the services”
 - (B) “...associated with research, planning, development, design, construction, alteration, or repair of **real property**” 40 USC Section 1102
 - “Real Property” means related to a specific asset or a construction project that will result in a specific asset.
 - (C) “...[services of an] engineering nature ... and individuals in their employ may logically or justifiably perform”
 - Public Law 108-136 referencing multi-award schedule contracts further refined this to mean “requiring to be performed under the direct supervision” of a professional engineer
 - Important Reminder: Lack of Licensing cannot be a barrier to submitting a proposal/bid. It is acceptable to require licensing to be in place at award, but the process shall allow time for interested firms to obtain licensing if they are identified as an apparent best bid.

“Engineer” in Arizona Statute

- ARS 41-2503.20 "Engineer services" means professional services within the scope of engineering practice provided in ARS title 32, chapter 1.
 - ARS 32-101.10 "Engineer" ...special knowledge by professional education and practical experience, is qualified to practice engineering and registered as a professional engineer.
 - ARS 32-101.20 "Engineering practice" means work requiring the application of mathematical, physical and engineering sciences to professional work in connection with any public or private utility, structure, building, machine, equipment, process, work or project.

Step 2: Determine Method

Request for Proposals vs Qualifications

- Cannot combine procurements requiring different Selection Factors in a single On-Call!
 - Engineering Work? → Follow QBS procedures
 - Not-Engineering Work? → Mandated to include Price or Costs as part of the Selection Factors
- Need an On-Call for both types of work? Do 2 separate on-call contracts!

On-Call Inquiries

- Multi-Year Contracts permitted?
 - Rolling stock/parts limited by regulation to five years; Rail limited to seven years
 - Others must be “reasonable” duration
 - ARS 41-2546 up to five years or special determination required
 - FHWA Best Practice Manual 3 – 5 years
 - FHWA Guidance (Engineering & ID/IQ) – Limited to 5 years
- Spending Caps?
- Dollar Thresholds requiring “Reviews”? (2 CFR 200.67 & OMB Exception 06/20/2018)
 - Micro Purchases (\$10,000) – distribute equitably
 - Small Purchases (\$250,000) – “Adequate” Price / Rate Quotes
 - Sealed Bid / Competitive Proposals
- Restricted to Scope “Categories”?
 - YES - if categories are very specific
 - General category “transportation planning” vs Specific category “corridor planning studies”

Non-Competitive Proposal

2 CFR 200.320(f)

- Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - The item is available only from a single source
 - The public exigency or emergency
 - The Federal awarding agency or pass-through entity expressly authorizes
 - After solicitation of a number of sources, competition is determined inadequate

Step 3: Solicitation

- Solicitation Document should include:
 - Work to be performed, Duration of Awards / Renewals,
 - Identify if Single or Multiple Awards to be made; how Multiples will be identified
 - On-Calls: How “task assignments/orders” & Modifications/Change Order will be processed
 - Other CFR-mandated requirements {based on requirements of the method chosen}
 - Ranked Evaluation Criteria, Federal Terms and Conditions
 - Terms and Conditions required from WP Agreement
 - If a multi-user contract, who is responsible for administering / managing Terms and Conditions?
- Submit to ADOT Regional Planner and MPDContracts@azdot.gov requesting review
 - Not a “legal” review!
 - Review with an eye toward compliance.

Not Engineering ...

How Do I Incorporate Price or Costs?

- Easiest method is to require submission of not-to-exceed rates to be charged for specific roles as part of the RFP process, and evaluate fair and reasonable on those rates!
- In the Task Assignment/Order process, (excluding lowest-bid projects) a budget is obtained that must be based on and verified with awarded not-to-exceed rates and then forms the basis for negotiating level of effort and tasks for the project award.
 - Cannot use time & materials unless another contract type is not suitable for the project. Requires a determination in the file – 2 CFR 200.318(j)(1).

Step 4: DBE Goal Assessment

- WP projects already submitted – Look before asking for a Project in AZUTRACS
 - AZUTRACS “project number” must be in solicitation! Responders must attach Bidder’s List! This is **REQUIRED** by ADOT – regardless of goal % or lack thereof!
 - Use it to fill out the Goal Assessment tool online. Make sure the work categories selected match the work to be performed in the contract!
 - Project added to WP later? Send request to MPDContracts@azdot.gov for numbering.
 - Incorporate the resulting Goal information in the solicitation.
 - Use that number later when entering contracts in DBE System.

Step 5: Funds, Solicit, Award

- Verify funding / obtain funding authorization (if appropriate)
- Complete the procurement process
- Assure evaluated according to requirements and criteria established in Solicitation
- Award contract(s)
- Assure procurement documentation maintained

Using On-Call Contracts

- All users must comply with terms and conditions
- Each project issued / awarded requires following identified process
- Procurement documents must be maintained for each awarded project
 - Federal Sole Source
 - Independent Cost Estimate
 - Selection criteria
 - Scope, Proposal/Quote as appropriate

Step 6: Administer Contract(s)

See WP Agreement DBE Section
and ADOT DBE Plan

- Create Contracts in the DBE System
 - On-Call Contracts also entered
 - Awards of defined scope projects entered as a “Task Order”
- Follow requirements of the system as established by BECO
 - Payments (Audits) entered in the DBE System
 - Monitor Contractor compliance with completing Audits & Entering Sub-Contractor Payments
 - Closeout Contract when final payment made
 - Submit all required DBE forms to BECO for the closeout

Contact Info

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