

Policy for Competitive Negotiation Qualifications Based Selection for Projects Using Federal Aid Highway Program (FAHP) Funding

Except as provided in Sections 2 and 3 below, the Town of Braselton shall use the competitive negotiation method for the procurement of engineering and design related services when FAHP funds are involved in the contract (as specified in 23 U.S.C. 112(b)(2)(A)). The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101–1104, commonly referred to as the Brooks Act.

In accordance with the requirements of the Brooks Act, the following procedures shall apply to the competitive negotiation procurement method:

1. Solicitation

The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Procurement procedures may involve a single step process with issuance of a request for proposal (RFP) to all interested consultants or a multiphase process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding consultants are ranked based on qualifications and request for proposals are then provided to three or more of the most highly qualified consultants. Minimum qualifications of consultants to perform services under general work categories or areas of expertise may also be assessed through a prequalification process whereby statements of qualifications are submitted on an annual basis. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under an RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

2. Request for Proposal (RFP)

The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:

- (A) Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. The scope of work should include the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;
- (B) Identify the requirements for any discussions that may be conducted with three (3) or more of the most highly qualified consultants following submission and evaluation of proposals;
- (C) Identify evaluation factors including their relative weight of importance in accordance with subparagraph (a)(1)(iii) of this section;
- (D) Specify the contract type and method(s) of payment to be utilized in accordance with 23 CFR 172.9;
- (E) Identify any special provisions or contract requirements associated with the solicited

services;

(F) Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals as these shall not be considered in the evaluation, ranking, and selection phase; and

(G) Provide a schedule of key dates for the procurement process and establish a submittal deadline for responses to the RFP which provides enough time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances shall be not less than 14 days from the date of issuance of the RFP.

3. Evaluation Factors

(A) Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.

(B) Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

(C) In-state or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement which attests to the minimum qualifications and competence of a consultant to perform the solicited services.

(D) The following non-qualifications-based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of ten percent (10%) of the total evaluation criteria to maintain the integrity of a qualifications-based selection:

1. A local presence may be used as a nominal evaluation factor where appropriate. This criterion shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.
2. The participation of qualified and certified Disadvantaged Business Enterprise (DBE) sub-consultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR Part 26.

4. Evaluation, Ranking and Selection

- (A) Consultant proposals shall be evaluated by the Town of Braselton based on the criteria established and published within the public solicitations.
- (B) While the contract will be with the prime consultant, proposal evaluations shall consider the qualifications of the prime consultant and any sub-consultants identified within the proposal with respect to the scope of work and established criteria.
- (C) Following submission and evaluation of proposals, the Town of Braselton shall conduct interviews or other types of discussions determined three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP. Discussion requirements shall be specified within the RFP and should be based on the size and complexity of the project as defined in Town of Braselton written policies and procedures (as specified in 23 CFR 172.5(c)). Discussions may be written, by telephone, video conference, or by oral presentation/interview. Discussions following proposal submission are not required provided proposals contain enough information for evaluation of technical approach and qualifications to perform the specific project, task, or service with respect to established criteria.
- (D) From the proposal evaluation and any subsequent discussions which have been conducted, the Town of Braselton shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria.
- (E) Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.
- (F) The Town of Braselton shall retain acceptable documentation of the solicitation, proposal, evaluation, and selection of the consultant accordance with the provisions of 49 CFR 18.42.

5. Negotiation

- (A) Independent estimate. Prior to receipt or review of the most highly qualified consultant's cost proposal, the Town of Braselton shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation and ensuring the consultant services are obtained at a fair and reasonable cost.
- (B) Elements of contract costs (e.g., indirect cost rates, direct salary or wage rates, fixed fee, and other direct costs) shall be established separately in accordance with 23 CFR 172.11.
- (C) If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, only the cost proposal of the consultant with which negotiations are initiated may be considered. Concealed cost proposals of consultants with which negotiations are not initiated should be returned to the respective consultant due to the confidential nature of this data (as specified in 23 U.S.C. 112(b)(2)(E)).
- (D) The Town of Braselton shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 49 CFR 18.42. This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract (as specified in 23 CFR 172.11(c)).

6. Small Purchases

The small purchase method involves procurement of engineering and design related services where an adequate number of qualified sources are reviewed, and the total contract costs do not exceed an established simplified acquisition threshold. The Town of Braselton may use the State's small purchase procedures which reflect applicable State laws and regulations for the procurement of

engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as specified in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds. The following additional requirements shall apply to the small purchase procurement method:

- (A) The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures.
- (B) A minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed.
- (C) Contract costs may be negotiated in accordance with State small purchase procedures; however, the allow ability of costs shall be determined in accordance with the Federal cost principles.
- (D) The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold would be ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

7. Noncompetitive

The noncompetitive method involves procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods. The following requirements shall apply to the noncompetitive procurement method:

- (A) The Town of Braselton may use their own noncompetitive procedures which reflect applicable State and local laws and regulations and conform to applicable Federal requirements.
- (B) The Town of Braselton shall establish a process to determine when noncompetitive procedures will be used and shall submit justification to, and receive approval from, the FHWA before using this form of contracting.
- (C) Circumstances under which a contract may be awarded by noncompetitive procedures are limited to the following:
 - 1. The service is available only from a single source;
 - 2. There is an emergency which will not permit the time necessary to conduct competitive negotiations; or
 - 3. After solicitation of a number of sources, competition is determined to be inadequate.
- (D) Contract costs may be negotiated in accordance with the Town of Braselton noncompetitive procedures; however, the allow ability of costs shall be determined in accordance with the Federal cost principles.

8. Additional Procurement Requirements

(A) Common Grant Rule

- 1. The Town of Braselton must comply with procurement requirements established in State and local laws, regulations, policies, and procedures which are not addressed by or in conflict with applicable Federal laws and regulations (as specified in 49 CFR 18.36).
- 2. When State and local procurement laws, regulations, policies, or procedures are in conflict

with applicable Federal laws and regulations, the Town of Braselton must comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization (as specified in 49 CFR 18.4).

(B) Disadvantaged Business Enterprise (DBE) program

1. The Town of Braselton shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26. When DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related services contracts may be achieved through either:
 - Use of an evaluation criterion in the qualifications-based selection of consultants (as specified in 23 CFR 172.7(a)(1)(iii)(D)); or
 - Establishment of a contract participation goal.

2. The use of quotas or exclusive set-asides for DBE consultants is prohibited (as specified in 49 CFR 26.43).

(C) Suspension and Debarment

The Town of Braselton must verify suspension and debarment actions and eligibility status of consultants and sub-consultants prior to entering into an agreement or contract in accordance with 49 CFR 18.35 and 2 CFR part 180.