

## 400 - Procurement

### AIP Requirements

Procurements made under the Airport Improvement Program (AIP) must adhere to the provisions outlined in Federal Regulation 49 CFR part 18.36. This regulation provides for policies and procedures to be applied to typical procurement actions under the AIP. This includes construction development, equipment purchases, and the selection for professional services (engineering consultants etc.). Grantees (Sponsors) are to use their own procurement system provided they incorporate required Federal statutes and provisions into their procurement process.

### Limitations of this Guidance

This guidance is intended to provide a convenient resource for identifying the requirements associated with the AIP and as established within relevant Federal regulations and statutes. This guidance **is not** intended to establish nor create requirements for participation in the AIP. Requirements for AIP participation are established within United States Code, Public Law, Federal Regulations and official FAA policy.

### Sponsor's Role

The Sponsor is the contractual authority for establishing and administering contract agreements. The FAA is not a party to the contract a sponsor executes in support of the AIP. The Sponsor is responsible for all contractual matters without recourse to the FAA. This includes bid evaluation, award of contract, dispute resolution, claim resolution, and settlement of all litigation issues.

### FAA's Role

The FAA's role is basically limited to determining AIP eligibility. The FAA may not act on the behalf of the sponsor in matters concerning procurement and contracting. The FAA carries out this role by a combination of cursory reviews and sponsor certification.

### Procurement Methods

Federal Regulation 49 CFR part 18.36(d) generally permits four types of procurement methods:

1. **Competitive Sealed Bids** - This method is the preferred method for development and equipment projects. This method requires the development of complete and reasonable specifications that detail the desired work items, services, or equipment characteristics.

The invitation for bids must be publicly advertised and bids solicited from an adequate number of potential bidders. All bids are to be publicly opened at a time and place prescribed within in the invitation-for-bids. The award of contract must be based on the lowest responsive proposal submitted by a responsible bidder. This procurement action assumes a firm fixed price contract agreement.

2. **Competitive Proposal** - This method is generally used when procurement by competitive sealed bids is neither reasonable nor feasible. Projects that include significant variables and options that would prohibit the preparation of complete and concise specification would be candidates for competitive proposals. Competitive proposals must be publicly advertised. The solicitation shall contain all evaluation factors and their relative importance in the evaluation. Proposals must be solicited from an adequate number of qualified sources. The award is to be made to the responsible firm whose proposal is most advantageous with price and other factors considered.

The procurement of professional services represents a unique form of competitive proposals. In conformance with the Brooks Act, procurement of professional services requires a qualification-based selection. The qualifications of competing firms are

evaluated based on prescribed criteria. Selection is based solely on a firm's qualifications. Cost and fee information may not be a selection factor.

3. **Small Purchase** - This procedure is available for procurements that fall under the simplified acquisition threshold, presently set at \$100,000. Application of the small purchase method should not be construed as option to waive fair and open competition. Under small purchase procurement, price quotations must be obtained from an adequate number of qualified sources.

Sponsors are strongly encouraged to adequately document all actions associated with small purchase procurements.

4. **Procurement by Noncompetitive Proposals** - As a rule, procurement actions are to be conducted in a manner that assures fair and open competition. It is possible however that under certain circumstances, procurement by a competitive basis may not be feasible. Federal Regulation 49 CFR Part 18.36 allows for noncompetitive procurement actions if certain conditions exist. These include:
  - a. The required item is only available from a single source.
  - b. A public exigency or emergency requires urgent procurement action.
  - c. After solicitation from a number of sources, competition is determined to be inadequate.
  - d. The FAA authorizes noncompetitive negotiations.

Sponsors must seek prior approval from the FAA in order to utilize noncompetitive procurement methods for development or equipment procurements.

Without prior approval, Sponsors may use noncompetitive procurement methods for acquisition of professional services that do not exceed \$10,000. This is typically used to prepare independent estimates, conduct legal sufficiency reviews, or perform audit services.

### **Procurement Competition**

In accordance with Federal Regulation 49 CFR part 18.36(c), all procurement transactions are to be conducted in a manner providing full and open competition. Sponsors are to avoid practices that limit or restrict competition. Restrictive practices that shall be avoided include but are not limited to:

- Incorporating unreasonable requirements
- Requiring unnecessary experience and bonding
- Unnecessarily use of "brand name" specifications
- Incorporating regional preferences
- Use of arbitrary actions in the procurement process

### **Uniformity of Equipment**

Uniformity of equipment is not in itself justification for sole source procurement. Justification may be valid if the new equipment represents a small portion (5% or less) of the overall inventory. An example may be the construction of the new connecting taxiway where the edge lights need to match the existing parallel taxiway edge lights. The sponsor must request FAA approval for such sole source procurements.

## **Description of Work or Services**

The solicitation must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not incorporate features that unduly restrict competition. The description should include a statement of the qualitative characteristics of the material, product, or service to be procured. All requirements that the offeror must fulfill and all other factors to be used in the evaluation of bids shall be clearly identified in solicitation.

If providing a clear and accurate description of the technical requirements is impractical, a "brand name or equal" description may be incorporated. The basis for acceptance however, must be the salient characteristics of the named brand.

## **FAA Approved Equipment**

Where the FAA has established approved vendor's list (e.g. appendix 3 of AC 150/5345-53), the installed equipment must included on the approved list to remain eligible. Sponsors should not rely solely on vendor statements that they meet the FAA standard. If the installed equipment is not shown on the approved list, the costs will be ineligible for AIP participation.

## **Buy American**

AIP Sponsors are obligated to comply with Buy American preferences by accepting the grant and the associated grant conditions. To remain AIP eligible, the sponsor shall not permit any contractor or subcontractor to acquire any steel or manufactured product produced outside of the United States unless otherwise authorized by the FAA.

## **Small and Minority Firms and Women's Business Enterprises**

Sponsors shall implement affirmative steps to assure that minority firms and women's business enterprises are afforded an opportunity to participate in the project. Affirmative steps that should be considered are identified in Federal Regulation 49 CFR part 18.36(e)

## **Cost and Price Analysis**

Federal Regulation 49 CFR Part 18.36 requires Sponsors to perform an analysis of cost or price for all procurement actions, including contract modifications. The method and degree of analysis will be dependent upon the size and complexity of the procurement action. Be advised, the FAA will not conduct this analysis for the sponsor. Typically, independent estimates must be prepared prior to receiving bids or proposals. Such estimates should be signed and dated by the preparer and retained in the Sponsor's records. The sponsor shall use the estimate as an aid in determining reasonableness and necessity of costs.

The Sponsor is the responsible party for assuring that a fair and reasonable cost is obtained for the desired material, equipment, or service. Any review conducted by the FAA should not be construed as a waiver of the Sponsor's responsibility to make the determination of fair and reasonable cost.

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## **Resources**

### **Regulations/Policy**

- [49 CFR Part 18](#): Uniform Administrative Requirements for Grants and Cooperative agreements.

## 410 - Small Purchase Procedures

### Overview

Small purchase procedures provide the Public Agency with an expedient method of procuring equipment and small construction projects. Small purchase procedures are those relatively simple and informal procurement methods for securing supplies construction services etc. that do not cost more than the "simplified acquisition threshold" as established in United State Code 41 U.S.C. 403 (11). This value is currently set at \$100,000.

### Application of Small Purchase Procedures

When equipment and/or construction contracts are expected to be less than \$100,000, the Public Agency may use small purchase procedures. Under small purchase procedures, the number of sources may be determined by the following:

- Number of qualified sources available
- Time frame involved
- Dollar value of procurement action

Federal Regulation 49 CFR 18.36(d)(1) states that an adequate number of qualified sources must be obtained for small purchase procedures. Normally, this requires obtaining a minimum of two bid proposals. Additional proposals are warranted if additional qualified bidders are available.

Oral solicitations may be warranted for very small procurements. For other than very small purchases, we request that a written solicitation be initiated along with a written proposal.

To address any potential audit issues, all small purchase solicitations should be well documented. Such documentation should be in written or printed format and should include vendors/companies that did not express an interest in the procurement.

For small purchase procedures involving construction work, the contract specifications and plans should be developed similar to larger contracts. All required Federal provisions must be incorporated into the project manual. Sponsors should note that some Federal provisions have differing dollar thresholds for application. For example, Davis-Bacon provisions are required for construction work expected to exceed \$2,000 while provisions for certifying debarment, suspension, ineligibility and voluntary exclusion do not apply for contracts under \$25,000.

### References:

49 CFR 18.36 Procurement  
41 U.S.C. 403 Public Contracts

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## Resources

### Regulations/Policy

- [49 CFR Part 18](#): Uniform Administrative Requirements for Grants and Cooperative agreements.

## 420 - Protest Procedures

### Overview

Federal Regulation 49 CFR Part 18.36 requires grantees to have established bid protest procedures to address and resolve disputes relating to their procurement actions. The Sponsor is responsible for the settlement of all contractual and administrative issues out of a procurement action.

A protester must exhaust all administrative remedies with the grantee before pursuing a protest with the FAA. FAA review of protests is limited to violations of Federal laws and regulations and deviations from the Sponsors formal protest procedures.

### Formal Protest Procedures

In order to ensure that protests are received and processed effectively, Sponsors should identify critical requirements of the protest procedure within their solicitation. A complete copy of the procedures must be provided to any vendor who formally requests the information.

The written procedures should typically address the following:

- Define the criteria for pre-bid protests, pre-award protests and post award protests
- Specify deadline dates for filing a protest
- Identify specific information required of a protest (name of protester, solicitation number, justification or grounds for protest)
- Location where protest are to be filed
- Statement that the grantee will respond in detail to each substantive issue raised by the protest
- Identify the responsible official authorized to make the final determination
- Statement that the Sponsor's determination is final
- Statement that the FAA will entertain protests the involve violation of Federal laws or regulations and protests that involve allegations that the Sponsor's written protest procedures were not followed.
- Allowance for reconsideration if relevant and critical information is discovered after final determination has been made.

### Effect of Protest on Procurement Action

The filing of a protest will likely impact the project schedule of a procurement action. The decision on whether to proceed with a bid opening of award of contract resides with the Sponsor. The Sponsor should seek legal counsel to weigh the risks associated with any procurement protest.

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## Resources

### Regulations/Policy

- [49 CFR Part 18](#): Uniform Administrative Requirements for Grants and Cooperative agreements.