

PUBLIC UTILITIES COMMISSION OF GUAM PROCUREMENT GUIDELINES AND PROCEDURES

1. General Policy. In accordance with 48 U.S.C. §1428a and Section 1, P.L. 26-18 (June 5, 2001), the Public Utilities Commission of Guam (PUC) is an independent rate-making authority for the Government of Guam which is independent of the Executive and Legislative Branches and hereby adopts and implements these Procurement Guidelines and Procedures to ensure that persons engaging in purchasing and purchasing-related activities for the PUC shall conduct their business dealings efficiently, fairly, and in a manner that will encourage broad based competition for the supplies and services being purchased by the PUC.

2. Procurement Officer. The PUC Administrator will serve as the PUC's Procurement Officer. The Procurement Officer ensures that PUC purchases follow these Guidelines and Procedures. The PUC's Chief Administrative Law Judge will serve as a resource in providing advice on proposals, bids and identification of vendors, when requested.

3. Micro-purchase and Small Purchase.

a. Micro-purchase: \$10,000 and below.

(1). Requirement: Solicitation of one quote is allowed if price is considered reasonable. Additional quotes are encouraged.

(2). Acceptable Quote Documentation: (a) Facsimile quote, (b) Written quote provided by vendor, (c) Memo documenting oral quotation by vendor – must include vendor name, vendor representative, date and amount of quote, or (d) Internet printout of price list. If asked by the PUC Procurement Officer, the prospective vendor is responsible for showing their price is reasonable.

(3). Professional Services: The following procedure shall be used if it is expected that the services of accountants, lawyers, architects, engineers, land surveyors, or other professionals can be procured for less than \$10,000:

(a). Examination for Qualifications and Negotiations: Before contacting any person to perform the required services, the Procurement Officer shall examine any current statements of qualifications on file with the territory. Based on this examination, the Procurement Officer shall contact the most qualified firm or professional and attempt to negotiate a contract for the required services at a fair and reasonable price.

(b). Technical Proposals or Statements of Qualification: If no current statements of qualifications are on file or the statements on file are inadequate to determine the most qualified firm or professional, technical proposals or statements of qualifications shall be solicited as follows:

(i). A minimum of three firms or professionals should be considered unless there are only one or two qualified firms or professionals; in the latter case, the Procurement Officer may consider only one or two firms.

(ii). A price or fee shall not be solicited until the most qualified firm or professional is chosen and only the most qualified firm or professional will be requested to submit a price.

(iii). If after negotiations, a fair and reasonable price cannot be agreed to, negotiations will be terminated with such firm or professional and negotiations begun with the next most qualified firm or professional. The process shall continue until a contract can be negotiated at a fair and reasonable price to the PUC.

b. Small purchase: between \$10,001 and \$250,000.

(1). Requirement: Require no less than three written quotes from vendors. This generally requires that specifications be emailed or faxed to at least three vendors. Award shall be made to the lowest responsible and responsive bidder.

(2). Acceptable Quote Documentation: (a) Facsimile quotes, (b) Written quotes provided by vendors, (c) Internet printout of three price lists, or (d) Facsimile or email confirmation to show solicitation was sent to a non-responsive vendor.

c. Procedures for Micro-purchase and Small Purchase Thresholds.

(1). PUC Procurement Officer determines, based upon instructions from the PUC, what supplies or services are needed.

(2). PUC Procurement Officer solicits required number of quotes and selects a vendor for purchases falling under the micro-purchase and small purchase thresholds and issues a purchase order or contract.

(3). PUC Procurement Officer creates on-line requisition order and creates a procurement file for the micro-purchase or small purchase.

4. Competitive sealed bidding for Purchases above \$250,000.

a. Requirement: Invitation for Bid (IFB) shall be mailed, emailed, or furnished to a sufficient number of vendors to secure competition. Competitive bidding shall follow the following Sealed Bid Process:

(1). Acceptable IFB Documentation: Sealed bid packages received by PUC Procurement Officer.

(2). **Public Notice**: Bids above \$250,000 must be afforded adequate public notice at least Fifteen (15) days before the bid due date. Bids must be solicited from an adequate number of known suppliers. Vendors have (15) working days to respond from the date of notice (unless unusual circumstances prevail; reason must be documented). The IFB must be posted on the PUC website fifteen (15) days before the due date and must include:

(a). A statement requiring bidders to include their contact information in their bids.

(b). Specifications and pertinent attachments.

(c). A description of the items or service being solicited sufficient to allow potential bidders to submit bids in response to the IFB.

(d). A bid submission deadline and award decision timeline.

(e). A statement that only written bids will be accepted and can be: (i) hand delivered; (ii) mailed to the address on the IFB; or (iii) emailed to the email address indicated on the IFB.

(3). Late Bids: Bids submitted after the bid submission deadline will not be accepted.

(4). Pre-Bid Conferences: Pre-bid conferences may be scheduled and, if scheduled, Pre-bid conference information will be contained in the bid packet or an amendment to the bid packet.

(5). Extension of Bid Submission Deadline: The PUC Procurement Officer may extend the deadline for bid submission beyond 15 days of public notice. Deadline extension must be documented and posted on the PUC website.

(6). Receipt and Handling of IFB submissions:

(a). Hard copies of the bids and modifications thereof shall: (1) For bids hand delivered or mailed to the PUC's office, be time stamped upon receipt and held in a secure place until the established due date; or (2) For digital copies of bids emailed to the PUC, the date and time of the PUC's receipt of the emailed bid shall serve as the official submission date and time and the documents will be downloaded and held in a secure place until the established due date.

(b). Bids must be opened publicly at a location specified in the IFB. The bids shall be opened, recorded, and evaluated.

b. Evaluation and Award Process.

(1). Evaluation Committee. The PUC will appoint an Evaluation Committee which may seek clarification from bidders and the Evaluation Committee will evaluate and compare the bids.

(2). Bid Award. The Contract shall be awarded to the bidder whose bids conforms to all the material terms and conditions of the IFB and which offers the lowest price.

(3). Evaluation Report. The Evaluation Committee will make an evaluation report which includes a price analysis of the bids and a recommendation for contract award. The Evaluation Committee chairperson will sign the report and submit it to the PUC Chairperson for approval.

(4). Notification of Award. A notification of award will be sent to all the bidders within ten days of the approval of the evaluation report by the PUC Chairperson.

5. Competition selection procedures for professional services above \$250,000.

I. Requirement: Solicitations for professional services, such as architects, engineers, land surveyors, and other professionals, shall be in the form of a Request for Proposals (RFP). RFPs shall be in accordance with the following RFP Process.

II. Adequate public notice shall be made at least Fifteen (15) days before the proposal due date and notice of the RFP shall be posted on the PUC Website no less than fifteen (15)

days prior to the deadline for submission of proposals. The Procurement Officer may send notice of the RFP to companies or individuals known to provide the required professional services.

III. Sealed Price Proposals: Proposals shall be submitted with Sealed Price Proposals to the PUC on or before the deadline for submission of Proposals.

IV. RFPs shall include:

- a. A description of the professional services required.
- b. A copy of or a description of the type of contract to be used.
- c. A description of the work to be performed.
- d. The start date of the work and the duration of the professional services.
- e. The deadline for the submission of proposals.
- f. A statement that only written Proposals and Sealed Price Proposals will be accepted
- g. A statement indicating that the sealed price proposals must be submitted: (1) In a separate, sealed envelope to be opened only after the proposals have been evaluated, or (2) A password protected digital file with the password included in the proposal to be downloaded and printed only after the proposals have been evaluated.
- h. A statement that offerors may request portions of their proposals which contain trade secrets or proprietary data to remain confidential. The Procurement Officer shall review all such requests approve them only if such portions of the proposals contain trade secrets or proprietary data and shall provide a written decision to the offeror making such request that grants or denies the request and which states the Procurement Officer's reasons for doing so.
- i. A statement regarding the minimum information proposals must contain including:
 - i. Offeror contact information and principal place of business.
 - ii. The abilities, qualifications, and experience of all persons assigned to provide the required services.
 - iii. Description of past performance on similar contracts.
 - iv. Detailed plan explaining how the services will be performed.
- j. The factors that RCOUG will use to evaluate the proposals.

V. Proposals submitted after the deadline for the submission of proposals will not be accepted.

- VI. Pre-Proposal conferences may be scheduled and information regarding Pre-Proposal conferences, if any, will be contained in the RFP or an RFP amendment.
- VII. Questions from offerors will be accepted in writing by the Procurement Officer up to five (5) days before the submission deadline. Such questions and the Procurement Officer's responses will be shared with all offerors.
- VIII. The Procurement Officer may extend the deadline for submission of proposals beyond beyond the fifteen (15) day public notice period. Any such extension shall be posted on the PUC website.
- IX. Receipt and Handling of Proposals and RFP submissions.
- a. Proposals and modifications shall be delivered to the PUC via: (1) Hard copies of Proposals delivered to the PUC office and time stamped upon receipt and held in a secure place until the established due date; or (2) Digital copies of Proposals emailed to the PUC's official email indicated on the RFP and the date and time of the emailed proposal shall serve as the official submission date and time and the documents will be downloaded and held in a secure place until the established due date.
 - b. Proposals shall have a sealed price proposal included in a separately sealed envelope or in a password protected digital file with the password included as part of the proposal.
 - c. Proposals shall not be opened publicly nor disclosed to unauthorized persons but shall be opened in the presence of two more members of the Evaluation Committee.

IV. **Evaluation and Award Process:**

- a. **Evaluation Committee.** The PUC will appoint an Evaluation Committee which may seek clarification from offerors and the Evaluation Committee will evaluate and compare the Proposals. Proposals shall be ranked by the Evaluation Committee with the most qualified offeror ranked first, the second most qualified offeror ranked second, etc.
- b. Once the ranking process is complete, the committee will open the most qualified offeror's sealed price proposal and begin negotiations with the most qualified offeror. If price and contract terms can be agreed upon, the Procurement Officer shall recommend award of the contract to the most qualified offeror. If the Evaluation Committee is unable to agree on price and contract terms with the most qualified offeror, the Evaluation Committee shall terminate negotiations with that offeror in writing, and proceed with negotiating with the next most qualified offeror or offerors, in the order they are ranked, until price and contract terms can be agreed upon and the contract can be recommended for award.

- c. An evaluation report which includes a cost analysis and the outcome of any pricing negotiation with the offeror or offerors will be signed by the Evaluation Committee chair and submitted to the PUC Chairperson for approval.
- d. A notification of award will be sent to successful offeror within ten days of the approval of the evaluation report by the PUC Chairperson.

6. Multiple Source Contracting.

I. Incremental Award:

- a. General: An incremental award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required. An incremental award may be used only when awards to more than one bidder or offeror for different amounts of the same item are necessary to obtain the total quantity or the required delivery.
- b. Intent to Use: If an incremental award is anticipated prior to issuing a solicitation, the Procurement Officer shall reserve the PUC's right to make such an award and the criteria for award shall be stated in the solicitation.

II. Multiple Award:

- a. General: A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror when the PUC is obligated to order all of its actual requirements for the specified supplies or services from those contractors. The obligation to order the PUC's actual requirements is limited by the provisions of Uniform Commercial Code of Guam, 13 G.C.A. §2306(1).
- b. Limitations on Use: A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple award shall be made in accordance with the procedures for micro-purchases, small purchases, competitive sealed bidding for purchases above \$250,000, and competition selection procedures for professional services above \$250,000 set forth in these Guidelines and Procedures, as applicable. Multiple awards shall not be made when a single award will meet the PUC's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of the PUC.

- c. Contract and Solicitation Provisions: All eligible users of the contract shall be named in the contract, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract, provided, that:
- (1) The PUC shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract;
 - (2) The PUC shall reserve the right to take bids separately if the Procurement Officer finds that the supply or service available under the contract will not meet a nonrecurring special need of the PUC; and
 - (3) The contract shall allow the PUC to procure supplies produced, or services performed, incidental to the PUC's own programs as may be available when such supplies or services satisfy the need.
- d. Intent to Use: If a multiple award is anticipated prior to issuing a solicitation, the Procurement Officer shall reserve the PUC's right to make such an award and the criteria for award shall be stated in the solicitation.

7. Sole source/noncompetitive procurement

- I. **Requirement**: All sole source procurements require written justification as to why no other bidder will be suitable or acceptable to meet the need. A sole source procurement must be approved in writing by the PUC Chairperson before an item is procured. Sole source procurements are allowed only in the following situations: (1) Compatibility of equipment, accessories, or replacement parts is of paramount consideration; (2) Sole supplier's item is needed for trial use or testing; (3) Sole supplier's item is to be procured for resale; (4) Public utility services are to be procured; (5) Supplies are offered through bankruptcy or receivership sales, or other disposition at lower than prevailing market prices; (6) Public exigency or emergency declared by the Governor of Guam will not permit a delay resulting from competitive solicitation; (7) After an IFB or RFP solicitation in which no bids or proposals are submitted and another solicitation would be ineffectual as determined in writing by the Procurement Officer.
- II. **Quote Solicitation**. The Procurement Officer shall solicit a quote from the sole source, in the form of a: (1) Facsimile quote; (2) Written quote provided by vendor; or (3) Internet printout. If the price for the item or service is reasonable, the PUC Chairperson may award the contract to the sole source.

8. Establishing a Pre-qualified Pool of vendors for a specific product, service, materials, or for indefinite quantity purchases. The Procurement Officer may establish a pre-qualified pool of

vendors for specific products, services, materials, or indefinite quantity purchases using the following process:

- I. The Procurement Officer shall post a Request for Information (RFI) soliciting a specific product(s), service, materials, or indefinite quantity purchases on its website for a period of fifteen (15) days. A submission deadline will be included in the RFI. To ensure maximum participation, the RFI should be sent via email or fax to multiple offerors. In addition to the website posting, the Procurement Officer may announce the RFI via other media or social media outlet to ensure maximum participation.
- II. The RFI must contain a clear and accurate description of the requirements for the material, product, or service procured and identify all requirements which offerors must fulfill in order to participate in the pre-qualified pool.
- III. All offerors who submit their required documents prior to the published deadline and who meet the RFI requirements may qualify to participate in the pre-qualified pool.
- IV. All prequalified lists of persons, firms, or products which are used in acquiring goods and services must be current and include enough qualified sources to ensure maximum open and free competition.
- V. All offerors in a pre-qualified pool will be utilized on a rotating basis by the Procurement Officer when making purchases for specific product(s), services, materials, or indefinite quantity purchases as indicated in the initial RFI.
- VI. Each pre-qualified pool must be updated on a bi-annual basis.

9. Composition, Roles and Responsibilities of IFB or RFP Evaluation Committees

The Evaluation Committee is an *ad hoc* committee comprised of a minimum of three individuals including the Procurement Officer and two (2) PUC Commissioners appointed by the PUC Chairperson. The Evaluation Committee's responsibilities include ensuring that the solicitation and proposed award was conducted in a manner providing full and open competition.

10. Price and Cost Analysis for Evaluation Purposes

Price analysis may be accomplished in various ways, including the comparison of price quotations, bid, or price proposals submitted, market prices, and discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

- I. **Price Analysis.** Price analysis is the process of determining whether the price is reasonable and acceptable. The analysis should include an evaluation of price for the same or similar products or services, details of the research conducted, details of negotiations with the vendor or contractor, or details of other efforts made by the program to validate price reasonableness. Price comparisons, not limited to the following, may be used in the price analysis:
 - a. Comparison with bids in the current procurement action.
 - b. Comparison with prior price quotations for the same or similar items or services.
 - c. Comparison with a published catalog price or published price list (a vendor's

- quotation or correspondence does not qualify as a published price list)
- d. Comparison with prices available on the open market
- e. Comparison with an in-house estimate (e.g., the cost of the work if performed by own staff) or an independent cost estimate (e.g., cost review by a third party expert)
- f. Comparison with prevailing rates in the industry

The price analysis must be documented and attached to the purchase order or contract.

- II. **Cost Analysis.** Cost analysis is the process of reviewing and evaluating each element of cost to determine reasonableness, allocability, and allowability. In the analysis, consider the following:

- a. Specific elements of cost.
- b. The necessity for certain costs.
- c. The reasonableness of amounts estimated for necessary costs.
- d. The reasonableness of allowances for contingencies.
- e. The basis used for allocation of indirect costs
- f. The appropriateness of allocations of particular indirect costs to the proposed contract.
- g. The reasonableness of the total cost.

Generally, cost analysis, rather than price analysis, is used to evaluate offered prices for complex procurement actions, or when comparative data to perform a price analysis does not exist. These comparisons are documented in a memo from the Procurement Officer or Evaluation Committee to the PUC Chairperson who must approve the fair and reasonable cost.

11. Appeal Process

A bidder or offeror may appeal a decision made by the Procurement Officer, or the IFB or RFP Evaluation Committee in accordance with the following the Appeal Process:

- I. **Step One.** The aggrieved bidder or offeror must submit their appeal in writing to the Procurement Officer within ten days after they receive the notice of award. The bidder or offeror must specifically cite the section of the PUC Procurement Guidelines and Procedures which they feel has been unfairly applied. The Procurement Officer must respond to the appeal in writing within 10 days after the appeal is filed and the Procurement Officer will only consider the issues stated in the appeal and will not consider any new issues after the deadline to file an appeal has expired.
- II. **Step Two.** If the aggrieved bidder or offeror does not accept the decision of the Procurement Officer, the aggrieved bidder or offeror may appeal the Procurement Officer's decision or response to the PUC Commission within 10 days of receiving the Procurement Officer's decision or response. The PUC Chairperson shall appoint an *ad hoc* committee to evaluate the appeal comprised of three PUC Commissioners. The committee will only consider the original issues stated in the Step 1 appeal and will not consider any new issues. The Committee will make a written recommendation to the PUC Chairperson to sustain or deny the appeal or take other necessary action within ten working days after receiving the Step Two appeal. The PUC Chairperson may sustain, deny, or remand the matter back to the Committee for further action. If the PUC

Chairperson sustains or denies the appeal the decision is final and the appeal process ends.

12. Cancellation of a Solicitation

The PUC solicitations authorized by the PUC Procurement Guidelines and Procedures may be cancelled due to lack of funding, lack of an adequate number of respondents, when public notice timelines were not followed, or other reason documented by the Procurement Officer. If a solicitation is cancelled, the Procurement Officer will notify those bidders or offerors who responded to the solicitation of the cancellation. Public notice of cancellations will also be posted on the PUC's website.

13. Rejection of Quote, Bid, or Proposal

The Procurement Officer may reject any quote, bid, or proposal if it does not comply with the requirements of the PUC Procurement Guidelines and Procedures.