Water Pollution Control Loan Program - Considerations for Engineering Procurement

This is NOT applicable to the Public Water Supply Loan Program

On June 10, 2014, the federal Water Resources Reform and Development Act of 2014 (WRRDA) was signed into law resulting in new requirements regarding the procurement of engineering/architectural related services.

Section 602(b)(14) of the WPCA states:
A contract to be carried out using funds directly made available by a capitalization grant under this title for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under Chapter 11 of Title 40, United States Code, or an equivalent State qualifications-based requirement (as determined by the Governor of the State).

New contracts, significant contract amendments, and contract renewals initiated on or after the effective date of October 1, 2014 are subject to this requirement. Qualifications-Based Selection (QBS) is a competitive procurement process whereby consulting firms submit qualifications for evaluation. The most qualified firm is selected and then negotiates the project scope of work, schedule, budget, and fee. The steps below must be followed in order to comply with the QBS process. The steps are based on USC Part 40 Chapter 11. Language from USC Title 40 Chapter 11 can be found at the end of this document.

QBS Step 1 – Selection Procedure
1. The applicant issues a request for qualifications (RFQ) based on the scope of work.
2. Statements of qualifications based on standard, publicly available criteria are evaluated.
3. A list of the most qualified firms is established.
4. Discussions are conducted with no fewer than three firms, and the firms are ranked according to qualifications.

QBS Step 2 – Negotiating a Contract
1. The applicant selects the most qualified firm and negotiations begin.
2. If the proposed fee is fair and reasonable, a contract is awarded. In determining fair and reasonable cost, scope, complexity, professional nature, and estimated value of services should be considered.
3. If an agreement cannot be reached with the top-ranked firm, negotiations are terminated and the process begins with the next-most-qualified firm. This process continues until an agreement is reached.

NOTE: Engineering services procured via other methods may be loan eligible! See page 2 of this document and the next paragraph.

IMPORTANT: Illinois fulfilled its federal requirements regarding procurement of engineering services during FY2015, FY2016, and FY2017. For loans issued during this three-year period, all engineering services were SRF loan eligible regardless of the procurement method utilized. We anticipate the same situation in the future.
Considerations for Loan Applicants and their Consultants

Illinois, like all other states and Puerto Rico, receives funds from the federal government in the form of an annual capitalization grant which is used to provide loans for a wide range of wastewater infrastructure projects. Each year, the state is required to report compliance with all grant conditions for a select group of loans (called “equivalency” projects) equal to the amount of the grant. For example, if the capitalization grant for FY2015 is $60,000,000, Illinois must insure that $60,000,000 of loans complied with all federal requirements even if $100,000,000 of loans were issued for the fiscal year.

A number of loan applicants using Illinois’ SRF program choose not to borrow money for engineering services. In addition, several municipalities that annually borrow money for ongoing infrastructure projects routinely utilize a QBS process when hiring an architectural or engineering firm. During any fiscal year, if loans issued to these two groups of borrowers have a total value exceeding the capitalization grant amount and qualify for federal “equivalency” reporting purposes, all other projects will be exempt from the requirements contained in 602(b)(14).

Based on historical data, we believe our pool of borrowers that choose to pay engineering expenses with local funds will remain consistent. We also believe that a significant percentage of our loan applicants currently utilize a qualification-based selection process for hiring consultants; however, there is no guarantee which communities will apply for loans in the future or when an entity will change their policies or procedures.

All applicants and their consultants should be aware of the new requirement, and understand that IEPA will continue to fund projects regardless of how a consulting firm is selected; however, the cost of engineering services may not be eligible for IEPA SRF funding unless a qualification-based selection process was utilized. Loan applicants will be required to certify compliance with Section 602(b)(14) of the Federal Water Pollution Control Act prior to receiving a loan.

For further information about procurement of engineering services, please contact your IEPA Project Manager or the Infrastructure Financial Assistance (IFAS) Section at 217-782-2027.
Language from: USC PART 40 CHAPTER 11—SELECTION OF ARCHITECTS AND ENGINEERS

NOTE: For IEPA SRF purposes, the term “Agency” as found in USC Part 40 Chapter 11 refers to “LOAN APPLICANT”.

Sec. 1101. Policy
The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

Sec. 1102. Definitions
In this chapter, the following definitions apply:

1. Agency head. - The term "agency head" means the head of a department, agency, or bureau of the Federal Government.

2. Architectural and engineering services. - The term "architectural and engineering services" means -

   A) professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;

   B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

   C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

3. Firm. - The term "firm" means an individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture or engineering.

Sec. 1103. Selection procedure
(a) In General. - These procedures apply to the procurement of architectural and engineering services by an agency head.

(b) Annual Statements. - The agency head shall encourage firms to submit annually a statement of qualifications and performance data.

(c) Evaluation. - For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(d) Selection. - From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

Sec. 1104. Negotiation of contract
(a) In General. - The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.

(b) Order of Negotiation. - The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.