

Harbor Towns Inc.
Procurement Policy for OSBM Grants

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Revision History

Version	Date	Notes
1.0	May 2024	Initial release.

1. BACKGROUND

1.1 Awardee

HARBOR TOWNS Inc. ("HARBOR TOWNS") is private nonprofit 501(c)(3) Corporation. The specific purposes of the Corporation are to design, implement, operate, and manage regional tourism-based economic development strategies to benefit the Albemarle Sound area of northeastern North Carolina including, but not limited to, a public-private water transportation system of ferry boats, taxi boats, dinner boats, charter boats, and other vessels.

1.2 Award Summary

HARBOR TOWNS Inc was the recipient of two awards from the Office of State Budget and Management (OSBM, the Agency).

1. Agreement No. 40301, award amount \$5,000,000 with grant period from July 1, 2021 through June 30, 2028.

The grant was obligated to Harbor Towns Inc. for the purpose of conducting tourism-based development in the towns of Plymouth, Columbia, Edenton, Manteo and Hertford, and the City of Elizabeth City.

2. Agreement No. 40302, award amount \$10,000,000, with grant period of July 1, 2023 through July 5, 2026.

The grant was obligated to Harbor Towns Inc, to ensure each Harbor Town – Edenton, Hertford, Elizabeth City, Columbia, and Plymouth -- will receive up to \$2,000,000 in waterfront and dock infrastructure improvements and enhancements mutually agreed upon by the town authority and Harbor Towns Inc. board of directors.

Harbor Towns Inc. is authorized by OSMB to procure and construct infrastructure improvements and enhancements mentioned above and listed in the approved scope of work. Following the guidance of OSBM grant manager, this procurement policy is established as of May 2024 to ensure grant compliance and to ensure best practice is implemented.

1.3 Award Governing Regulations

The agreements require compliance with terms and conditions and statutory provisions outlined in:

- a. G.S.143C-6-22 Use of State Funds by Non-State Entities.
- b. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) promulgated by the United States Office of Management and Budget sections 2 C.F.R. 200 as applicable with specific acknowledgement of responsibility under Subpart E "Cost Principles";
- c. North Carolina Administrative Code Title 09, Chapter 03, Subchapters 03M.
- d. and the requirements found in S.L.2021-180, Section 5.2,5.3; and 40.8 as amended by S.L.2021-189.

1.4 Voluntary Election of Selected Federal and State Regulations

Per these provisions above, HARBOR TOWNS Inc. is **NOT** automatically subject to Uniform Guidance Subpart D (procurement policy) nor NC state procurement statutes and construction manual, however, in order to ensure proper oversight of the procurement of goods, services and constructions, Harbor Towns Inc **voluntarily** elect to follow a select set of rules in the mentioned regulation to show the good faith in establishing good internal controls.

This policy document is a **living document** – revisions will be made on an ongoing basis, as needed, to reflect HARBOR TOWNS's policies and procedures maturity or in relation to any required provision noted above.

2. PROCUREMENT POLICY AND THRESHOLDS

Harbor Towns Inc. and its Board of Directors elect to adopt procurement methodology and thresholds detailed in this section.

This policy is also required to be followed by any contractors, consultants, subrecipients of Harbor Towns should any procurement is conducted using the OSBM grants on behalf of Harbor Towns Inc.

2.1 Micro-Purchase (Purchase Under \$ 10,000)

Micro-purchases may be awarded without soliciting competitive price or rate quotations if Harbor Towns Inc. considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Debit cards can be used for micro-purchases if procedures are documented and approved. The micro-purchase threshold is set at \$10,000 on organizational level for general procurement purposes. The threshold is adjusted to donor specific requirements when conducting grant eligible procurements.

2.2 Small Purchase (Purchase between \$10,000 and \$90,000 for non-construction Goods and Services, \$10,000 to \$250,000 for constructions and repairs.)

requires a selection justification document which contains adequate number of qualified sources or good faith attempt of obtaining options (or bids), reviewed and approved by the board.

2.3 Formal Procurement (Purchase above \$250,000)

2.3.1 Sealed bids.

A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, the invitation for bids must be publicly advertised.

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

2.3.2 Proposals.

A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be **publicized and identify all evaluation factors** and their relative importance. Proposals must be solicited from an **adequate number of qualified offerors**. Any response to publicized requests for proposals must be considered to the maximum extent practical.

(ii) The Harbor Towns must **have a written method for conducting technical evaluations of the proposals received and making selections;**

(iii) Contracts must be awarded to the responsible **offeror whose proposal is most advantageous to the Harbor Towns Inc, with price and other factors considered; and**

(iv) The Harbor Towns may use competitive proposal procedures for qualifications-based procurement of **architectural/engineering (A/E) professional services** whereby offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

2.4 Sole Source Purchases

Recipients may conduct noncompetitive ("sole source") procurement through solicitation of proposals from only one source when one or more of the following circumstances apply:

- The item/service is available only from one source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- Competition is determined inadequate after solicitation of a number of sources
- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$10,000.00)

Factual data must include the following:

1. **Uniqueness** of items or services to be procured from the proposed contractor or vendor (e.g., compatibility or patent issues)

2. **How the Harbor Towns Inc. determined** that the item or service is **only available** from one source (e.g., market survey results, independent agency research, patented or proprietary system)
3. Explanation of need for contractors' expertise linked to the current project (e.g., knowledge of project management, responsiveness, experience of contractor personnel, and/or prior work on earlier phases of project)
4. Any additional information that would support the case.

2.5 Contract Form Restrictions

The cost plus a percentage of cost and percentage of construction cost methods of contracting **must not be used**.

The time and material contract **must not be used unless there is no other contract form is suitable**. It is required that a "Not to Exceed" amount is set if time and material contract is awarded.

2.6 Cost or Price Analysis for Procurement Above \$250,000

The Harbor Towns **must perform a cost or price analysis** in connection with every procurement action in excess of the Federal Simplified Acquisition Threshold (\$250,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Harbor Towns must make independent estimates before receiving bids or proposals.

2.7 Pre-Bid/Pre-Proposal Conferences or Site Visits

When necessary, Harbor Towns should hold conferences or site visits with potential vendors as the first process of the timeline of the solicitation. While these conferences provide opportunities to emphasize and clarify complex or critical solicitation requirements, eliminate ambiguities or misunderstandings, and permit vendor input, agencies should consider whether attendance is required for a vendor to understand the solicitation and submit responses.

- Conferences or site visits should be conducted with potential vendors when issuing solicitations for complex or critical requirements.
- Attendance at conferences or site visits may be either:
 - o Mandatory
 - o Urged and cautioned (optional)
- Any conference or site visit requirements should be included in the solicitation document.
- At the conference or site visit, a sign-in roster should be provided.
 - o The agency representative shall sign the attendance roster.
 - o Only attendees who have arrived on time shall sign the attendance roster.
 - o Attendees shall indicate on the sign-in sheet all of the parties they represent.
 - o Late-comers may attend but shall not sign the attendance roster.

This is mostly relevant to mandatory conferences.

- o For mandatory site visits, only vendors who are represented on the attendance roster and who attend for the required duration of the site visit will be deemed to have met the attendance requirement.
- Addenda shall be issued to address vendor questions and any agency modifications to the solicitation resulting from the site visit.
- If adverse circumstances dictate, virtual conferences may be utilized. Agencies should ensure that accurate attendance is kept for the virtual conference. For example, vendors may be asked to put their information in the chat function, which can then be exported and saved to the official procurement file

2.8 Response Time

Certain procurements require sealed offers, which are defined as offers that remain unopened until the public opening time stated in the Solicitation. Sealed offers are required for formal solicitations, but informal solicitations may also require sealed offers at the agency's choosing.

When sealed offers are required, the solicitation document will state the deadline for vendor responses to be received. The bid opening dates should provide vendors with ample time to respond.

Sealed bid opening dates shall be no less than 10 calendar days from the date the solicitation is posted. Complex requirements may require longer preparation times and should provide sufficient time for vendors to prepare a response.

2.9 Acceptance Period

In order to allow the Harbor Towns time to conduct the bid evaluation and any negotiations, vendors should agree to hold their bid open for a certain period of time. During this time the vendor must honor the terms of its bid submission, including pricing, if the state selects the vendor for contract award.

Bids should be valid for a minimum of 60 calendar days unless otherwise noted in the solicitation documents or the vendor's bid response. The acceptance period should be adjusted based on the subject matter of the procurement and whether negotiation is anticipated. Complex negotiations with sophisticated vendors can take weeks or months to complete.

2.10 Specifications

"Specification" means any description of the physical or functional characteristics of, or the nature of, the goods or services to be procured. Specifications can either enhance or inhibit competition depending on how they are written. Goods and services specifications must be written to meet agency needs while maximizing competition and should not be overly restrictive or descriptive in favor of a particular Vendor's product. Several specification categories are listed herein in the preferred order of use.

2.10.1 Generic (Performance and Design)

Buyers should analyze incoming requirements with a view towards soliciting the requirement on a generic specification basis. Generic specifications may be:

- a) Performance specifications, which set forth the performance requirements
- b) Design specifications, which set forth the essential characteristics of the items solicited

2.10.2 Brand Name or Functional Equivalent

When it is impractical to develop a generic specification, a brand name may be used to convey the intended style, type, character, and quality of the article desired. Unless otherwise provided in the solicitation document, the name of a certain brand, make, or manufacturer does not restrict bidders to the specific brand or manufacturer named.

Any offering which the state, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The solicitation should inform vendors, however, that the vendor must identify the equivalent product it intends to supply in its response.

2.10.3 Brand Specific

A brand specific specification restricts the acceptable products to those of one or more specified manufacturers. Brand specific rationale can be used **only when the requirement can be met by the exact specifications offered by a particular piece of equipment made by the manufacturer.**

Use of a brand specific specification must be approved in advance based on a written justification. The agency must internally approve the justification if the procurement is valued less than the agency's general delegation. **The approval should be documented in the official procurement file.** Brand specific specifications may be appropriate in situations such as:

- When the desired product must be compatible with or is an integral component of the existing equipment or products, or where prequalification of products is necessary to support specific needs of a program
- When a product is covered by a patent or copyright, when the product must yield absolute continuity of results.

- When the product is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training.

Upon solicitation, every effort must be made to obtain full competition among the resellers which carry a manufacturer's product. Protests may occur if written solicitations are ambiguous or inconsistent. Agencies should use caution when developing specifications in order to minimize the possibility of a bid protest.

2.11 Contract Pricing Structures

There are several types of contract pricing structures available to procurements depending on the nature of a solicitation. The most common are discussed below.

2.11.1 Fixed Price Contracts

A fixed price contract is where firm unit or total prices are established upon contract award for goods or services. A fixed price contract may result from bidding or negotiation processes. They are used when specifications are clear, and costs are predictable. There is minimal risk to the purchasing agency when firm fixed price contracting is used because the financial requirements are known. This type of contract encourages efficient performance and is the least costly to administer. The use of firm fixed price contracting may be inappropriate if requirements or specifications are unclear or indefinite.

2.11.2 Fixed Price with Escalation or De-Escalation

This type of fixed price agreement provides for price adjustments up or down if specified contingencies occur. This type of contracting may result from bidding or negotiation processes. It is used to minimize fluctuations in vendor's prices due to unstable markets. The contract period is typically over a long period of time. The use of fixed price contracts with escalation or de-escalation reduces the need for contractors to inflate the cost of goods to offset unstable markets or economic conditions. The risk of cost increases or decreases is partially transferred to the buyer. Administrative costs may be increased as a result of the greater contract administration efforts that are required for this type of contract. Normally, any upward price adjustment should be justified and approved by the Harbor Towns prior to its effectiveness.

3. RECORD RETENTION AND DISPOSAL

HARBOR TOWNS agrees that from the date of execution of the Agreement and for five (5) years following its termination, the books, records, documents, and facilities of HARBOR TOWNS are subject to being audited, inspected, and monitored at any time by the Agency upon its request (whether in writing or otherwise). HARBOR TOWNS will provide Agency staff and staff of the Office of State Auditor and any federal monitor or auditor with access to financial and accounting records and audit work papers in the possession of any auditor of any recipient of State funding to support internal audit, financial reporting, and related requirements.