

RESOLUTION NO. 136, SERIES 2016

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED NEW CONTRACT – (NEW ALBANY HEATING, AIR CONDITIONING AND ELECTRICAL, INC. - \$250,000.00).

Sponsored By: Council Member Dan Johnson


BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The following appropriation for the listed contract is hereby approved:


HOUSING AND COMMUNITY DEVELOPMENT

\$250,000.00 for a noncompetitively negotiated new Contract with New Albany Heating, Air Conditioning and Electrical, Inc. for private home weatherization work done pursuant to federal and state grants from May 1, 2016 through April 30, 2017.

SECTION II: This Resolution shall take effect upon its passage and approval.

  
H. Stephen Ott  
Metro Council Clerk

  
David Yates  
President of the Council

  
Greg Fischer  
Mayor

12/20/16  
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell  
Jefferson County Attorney



BY: 

September 15, 2009

Ms. Karen Quinn  
Deputy General Counsel  
Kentucky Housing Corporation  
1231 Louisville Road  
Frankfort, Kentucky 40601

Dear Ms. Quinn:

My client, the Louisville Metro Department of Housing and Family Services requests KHC's approval of the following proposed procurement procedure for federally-funded weatherization work. As I will explain below, KHC's approval is required by federal regulations.

Metro Housing is to receive federal funding from the American Recovery and Reinvestment Act of 2009 as well as the Department of Energy. Metro Housing expects that this funding will allow over 370 weatherization projects to be completed over the next year.

Metro normally bids for work like weatherization under the Kentucky Model Procurement Code's section 45A.365, the formal bidding process for local governments. Bidding for 370 projects, however, creates time and manpower problems for the Metro Government. On average, Metro-wide, Louisville formally bids for about 250 contracts every year; this includes everything from new fire trucks, computer equipment, software; in short, everything the government here needs to operate. More than doubling the number of contracts let each year presents two problems: the government may not have adequate personnel to manage the increased number of bids. Second, bidding through Metro Purchasing involves a significant amount of time; Metro Housing is concerned that the time it takes to bid will prohibit it from getting all 370 projects completed and might result in Housing having to return money to the federal government unspent.

With these concerns in mind, my office has come up with a proposed solution. Instead of bidding each job formally under the bidding statute, Metro Housing, with KHC's prior approval, could execute contracts with each contractor who is currently on the KHC's Approved Contractors List. These contracts would be "Professional Service Contracts" and they would be executed pursuant to KRS 45A.380, the "noncompetitive negotiation" process of the state Model Procurement Code (as it applies to local governments).

Metro would award no work under these PSCs initially. Instead, Metro would follow the required process prescribed in the "U.S. Department of Energy State Plan/Master File Worksheet" ("Worksheet") document under the heading "Award of Bids" on page 4 of 31 of that document. In fact, the process there will be copied exactly into each PSC, so that the process binds Louisville Metro and the contractor. Louisville Metro will also, of course, follow the abovementioned procedure during each weatherization project.

It is Metro's understanding, from discussions with other local Community Action Partnerships and others, that this Worksheet process, is the one followed uniformly by local agencies throughout the state.

The Metro Government must receive the approval of KHC in order to follow its proposed purchasing method for these weatherization projects, according to 10 CFR 600.236 (d)(4)(i)(C). The regulations in 10 CFR provide the rules for spending by the recipients of federal grant funds. Specifically, the money for weatherization is coming from the Department of Energy, and the regulations in 10 CFR are for DOE grants. 10 CFR 600.236 (d)(4)(i)(C) provides: "Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies...: (C) The awarding agency authorizes noncompetitive proposals."

Metro Housing, I think, must ask for KHC's approval of its proposed process because, though Housing will use the bidding process as required by the Worksheet, the initial contracts with each firm will be executed under the "noncompetitive negotiation" process of KRS 45A.380.

I appreciate your assistance with this matter.

Yours Truly,

Paul C. Rutherford  
Assistant Jefferson County Attorney

cc: Christina M. Heavrin, Metro Housing  
David C. Howard, Metro Housing  
Keith T. Jackson, Metro Housing  
Craig Bowen, Metro Purchasing  
Sheryl Powell, Metro Purchasing  
Kevin Moore, Finance