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MEMORANDUM Housing and Redevelopment - Council Memo No. HD09-13

DATE: April 28, 2009

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
DENNIS STRACHOTA, MANAGEMENT SERVICES DIRECTOR
ROBERT COMBS, PURCHASING AND MATERIALS MANAGER

FROM: KURT KNUTSON, HOUSING AND REDEVELOPMENT MANAGER

SUBJECT: ORDINANCE NO. 4154, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, DECLARING PART 85, OF TITLE 24, OF THE CODE OF FEDERAL REGULATION TO BE A PUBLIC RECORD; AMENDING CHAPTER 3 OF THE CODE OF THE CITY OF CHANDLER TO ADD NEW SECTION 3-16 ESTABLISHING THE CAPITAL FUND STIMULUS GRANT PROCUREMENT POLICY; AND DECLARING AN EMERGENCY.

RECOMMENDATION

Staff recommends to City Council the adoption of Ordinance No. 4154 – Amending Chapter 3 of the Code of the City of Chandler by establishing a separate Capital Fund Stimulus Grant Procurement Policy.

BACKGROUND

The Housing and Redevelopment Division has received \$595,661.00 in Capital funding from the Office of Capital Improvements through the American Recovery and Reinvestment Act (ARRA) award. The United States Department of Housing and Urban Development (HUD) is providing stimulus funds to public housing agencies for capital improvements and modernization of the agency's public housing stock. The ARRA legislation has certain requirements and mandates associated with accepting and using these funds. The ARRA statute provides HUD the ability to supersede requirements relating to the procurement of goods and services arising under state and local laws and regulations. HUD has elected to invoke that provision and therefore, such state and local procurement laws and regulations shall not apply to the expenditure of ARRA Capital Fund Formula grants.

DISCUSSION

In order to comply with the procurement mandate, staff is proposing that City Council amended Chapter 3, Section 3-16 of the Code of the City of Chandler and create a separate Capital Fund Stimulus Grant Procurement Policy for the use of HUD Capital ARRA funding. City staff will use this procurement policy when procuring goods and services using Capital Fund Stimulus Grants.

Some of the ARRA specific requirements are:

- 1) **Priorities:** PHAs shall give priority to Capital Fund Stimulus Grant projects that can award contracts based on bids within 120 days from February 17, 2009.
- 2) **State and Local:** Any requirements relating to the procurement of goods and services arising under state and local laws and regulations shall not apply to Capital Fund Stimulus Grants. PHAs shall instead follow the Part 85 requirements.
- 3) **Part 85 Compliance:** PHAs shall amend their procurement standards and policies as necessary in order to expedite and facilitate the use of the funds. This amended policy can be used only for procurements related to Capital Fund Stimulus Grants. This must be done in writing and consistent with PHA policies and procedures (such as Board approval) and labeled as Capital Fund Stimulus Grant Procurement Policy. Specifically, PHAs shall remove all procurement standards that are contrary to Part 85 or the Recovery Act. Where permitted by Part 85, PHAs may insert their own procedures provided that they are not contrary to the purposes of the Recovery Act.
 - a. For example, a PHA may use their existing protest procedures, written codes of standards for employees engaged in the award and administration of the contracts and other procedures as long as they are not contrary to Part 85.
 - b. It is important to note that PHAs shall continue to follow all Part 85 requirements regarding conflicts of interest, contract cost and price.
- 4) **HUD Handbook:** PHAs may use the Procurement Handbook for Public Housing Agencies (7460.8 rev-2) for guidance. The Handbook can be found at: <http://www.hud.gov/offices/adm/hudclips/handbooks/pihh/74608/index.cfm>.
- 5) **Noncompetitive Proposals:** According to 24 CFR 85.36(d)(4), if solicitation of a proposal is only from one source or if the PHA finds that after solicitation of a number of sources, that competition is inadequate, the PHA may award the contract noncompetitively where small purchase procedures, sealed bids or competitive proposals are infeasible and one of the circumstances in 85.36(d)(4)(i) applies. One such circumstance is public exigency that will not permit a delay resulting from competitive solicitation (85.36(d)(4)(i)(B)). If the PHA finds that other competitive methods of procurement are infeasible, HUD will support the PHA's use of the public exigency circumstance based on the purpose and requirements of the Recovery Act. Section 3 of the Recovery Act provides that these funds shall be managed and expended to achieve the purposes specified including commencing expenditures and

activities as quickly as possible consistent with prudent management. Further the Recovery Act has imposed expeditious obligation and expenditure requirements on the Capital Fund Stimulus Grants and directs HUD to assist PHAs as necessary to expedite and facilitate the use of these grants. PHAs may use the noncompetitive proposals method, but must do so on a contract-by-contract basis and in compliance with all Part 85 requirements including the requirement for a cost analysis and the conflict of interest requirement. The PHA must ensure that the noncompetitive proposals process followed is clearly captured in their amended Capital Fund Stimulus Grant Procurement Policy. Further, the PHA must maintain records sufficient to detail the significant history of each contract's procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (85.36(b)(9)). No HUD pre-award review is required for noncompetitive proposals as stated in Section 8.4(C), Chapter 8 of HUD Handbook No. 7460.8 Rev 2. However, all PHAs are reminded that they must make available upon HUD's request the PHA Capital Fund Stimulus Grant Procurement Policy and any documents requested related to procurement activity as stated in 24 CFR 85.36(g).

6) Force Account: To the extent feasible, the PHA should consider employing existing or additional force account laborers on either a permanent or a temporary basis to perform Capital Fund stimulus grant work. See 24 CFR 968.105 and 968.120. No prior HUD approval is required specifically for force account labor, but such work must be incorporated into the Capital Fund planning, budgeting and reporting documents.

7) Buy American: PHAs shall follow Buy American requirements of section 1605 of the Recovery Act and use only iron, steel and manufactured goods produced in the United States in their projects.

8)The ARRA imposes additional reporting requirements beyond the standard reporting requirements for Capital Fund grants. The reporting requirements will require contractors and suppliers to provide job creation and retention information to the PHAs that expend ARRA Capital Fund grants.

FINANCIAL IMPLICATIONS

Funding for the Capital Fund Program is provided by the Department of Housing and Urban Development through the American Recovery and Reinvestment Act.

PROPOSED MOTION

Move that Council approve Emergency Ordinance No. 4154 declaring Part 85, of Title 24, of the code of federal regulation to be a public record; amending Chapter 3 of the Code of the City of Chandler to add new section 3-16 establishing the Capital Fund Stimulus Grant Procurement Policy.

Attachments: Ordinance No. 4154

ORDINANCE NO. 4154

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, DECLARING PART 85, OF TITLE 24, OF THE CODE OF FEDERAL REGULATION TO BE A PUBLIC RECORD; AMENDING CHAPTER 3 OF THE CODE OF THE CITY OF CHANDLER TO ADD NEW SECTION 3-16 ESTABLISHING THE CAPITAL FUND STIMULUS GRANT PROCUREMENT POLICY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. The document identified below, three (3) copies of which shall remain on file in the office of the City Clerk, is hereby declared to be a public record, as that term is used in Arizona Revised Statutes § 9-801:

Part 85, of Title 24 of the Code of Federal Regulations (24 CFR Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments").

Section 2. Chapter 3 of the Code of the City of Chandler is hereby amended to add a new section 3-16, to read as follows:

3-16. The Capital Fund Stimulus Grant Procurement Policy.

3-16.1. Capital fund stimulus grants. As used herein, "Capital Fund Stimulus Grants" means monetary funds granted to or received by City as Fiscal Year 2009 Public Housing Capital Fund Grants provided by the federal government in accordance with the federal American Recovery And Reinvestment Act Of 2009 (the "Recovery Act").

3-16.2. General procurement requirements not applicable. The procurement policies and standards set out in this Chapter 3 of the Chandler City Code or elsewhere in the Code, or in any other ordinances, resolutions, policies or regulations implementing the procurement provisions of the Chandler City Code, shall not apply to goods and services procured with Capital Fund Stimulus Grants except as allowed under this Section 3-16.

3-16.3. Procurements using Capital Fund Stimulus Grants. When procuring goods and services using Capital Fund Stimulus Grants, City shall comply with the following procurement requirements:

- (a) Priority. Priority shall be given to Capital Fund Stimulus Grant projects that can be awarded contracts based on bids within 120 days from February 17, 2009.
- (b) Part 85. City shall comply with the procurement policies and standards set out in Part 85, of Title 24, of the Code of Federal Regulations ("Part 85"), a public record is hereby adopted by reference and made a part hereof as if fully set out in this Chapter. In doing so, City shall comply with the following requirements:

(1) City shall follow all Part 85 provisions regarding conflicts of interest, and shall follow applicable local or state laws, rules or regulations only to the extent that they are more stringent and are not contrary to Part 85 or the purposes of the Recovery Act.

(2) City shall follow all Part 85 provisions regarding contract cost and price, including, without limitation, the requirements under 24 CFR § 85.36(f) that a cost or price analysis must be performed in connection with every procurement action including contract modifications.

(3) City shall procure goods and services that do not cost more than \$100,000 through use of the small purchase procedures provided under Part 85, under which it is sufficient for City to merely obtain price or rate quotations from an adequate number of qualified sources.

(c) Noncompetitive proposals. Procurement by noncompetitive proposals means procurement through solicitation of a proposal from only one source, or where, after solicitation of a number of sources, competition is determined inadequate. Under Part 85, 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 circumstances stated in 24 CFR § 85.36(d)(4) applies. City may use the noncompetitive proposals method, but only on a contract-by-contract basis and only in compliance with all Part 85 requirements including the requirement for a cost analysis and the conflict of interest requirement.

(d) Force account. To the extent feasible, city shall consider employing existing or additional force account laborers on either a permanent or a temporary basis to perform capital fund stimulus grant work.

(e) Buy American. City shall follow the "Buy American" requirements of Section 1605 of the Recovery Act where applicable.

3-16.4. Retention of competitive procurement procedures. Notwithstanding the provisions of subsections *3-16.2* and *3-16.3* above, each of the following shall apply:

(a) In undertaking competitive procurements for goods and services using Capital Fund Stimulus Grants, City shall comply with the same competitive procurement procedures as are set out in sections 3-8, 3-10, and 3-11 of Chapter 3 of the Chandler City Code, or in any other ordinances, resolutions, policies or regulations implementing these sections of the Chandler City Code, provided such procedures are not contrary to Part 85.

- (b) The general standards of ethical conduct set out in section 3-15 of Chapter 3 of the Chandler City Code shall apply to procurements using Capital Fund Stimulus Grants to the extent that such standards of conduct are not contrary to Part 85.
- (c) Prior city council approval of any procurement contract shall be obtained in accordance with the requirements of section 3-9 of Chapter 3 of the Chandler City Code.

Section 3. That the immediate operation of the provisions of this Ordinance are necessary for the preservation of the public peace, health, life, and property of the City of Chandler and an emergency is hereby declared to exist, to wit: the procurement standards and policies set out in this ordinance must be in place in order for the City to meet federal requirements for use of Capital Fund Stimulus Grants being made available on an expedited basis by the federal government. This Ordinance shall be in full force and effect from and after its passage, adoption and approval by the Chandler City Council, and it is hereby exempt from referendum provisions of the Constitution and the laws of the State of Arizona.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of _____, 2009.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY *GAB*

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4154 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of _____, 2009, and that the vote was ____ ayes, ____ nays.

CITY CLERK

PUBLISHED: