

PROCUREMENT PROCESS

I. INTRODUCTION

Recipients of Community Development Block Grant (CDBG) funds will procure a variety of items, materials and services throughout the duration of their projects. Section (§) 570.489 (g) of 24 CFR 570, Community Development Block Grants; State Program; Final Rule, dated November 9, 1992, permits States to follow their own procurement policies and procedures. However, cost plus a percentage of cost and percentage of construction cost contracting methods are prohibited, as stated in 24 CFR 85.

Before beginning any procurement activities, grantees must adopt a written Code of Conduct and ensure that all of their employees and/or agents are familiar with its provisions. This Code of Conduct will ensure that grantees adhere to Arkansas Code Annotated (A.C.A.) §§ 19-11-701 to 717 regarding avoiding conflicts of interest by their employees and agents in the award and administration of CDBG contracts. A Sample Code of Conduct is included as Form 113.

Administrative, engineering and architectural consultants who prepare pre-application or application materials are advised not to participate in any procurement activities for services for which they intend to submit a statement of qualifications. Because costs for improperly procured goods, materials and services may be disallowed for grant reimbursement, it is important that questions regarding conflicts of interest and contract award procedures be discussed with the grantee's attorney of record. Questions regarding CDBG procurement procedures should be referred to the Arkansas Economic Development Commission grants manager prior to contract award.

Costs for procurement activities are eligible for reimbursement only if they are incurred **after** the grants division issues a grant agreement or Request to Incur Cost approval letter.

II. TYPES OF PROCUREMENT

Below are five basic procurement methods common to most CDBG projects:

A. Small Purchase Procurement (Less than \$10,000)

1. Definition

The procurement of any goods or services, except those defined below in Section II. D. under competitive negotiation, that does not exceed \$10,000 per contract in the aggregate, are defined as small purchases. According to A.C.A. §14-58-303, grantees must define, by ordinance, the procedure for making all purchases less than \$10,000.

2. Procurement Steps

- a. Identify in writing the item or service to be procured.
- b. Contact the Commission's Small and Minority Business Division for a list of potential bidders.
- c. Solicit, in writing, written quotes from at least three qualified bidders. Verbal quotes, documented the grantee in writing, are acceptable for small purchases less than \$10,000.
- d. Identify the lowest responsible bidder.
- e. Notify each bidder in writing as to whether or not they are the apparent low bidder.
- f. Issue a written engagement letter and/or execute a contract for performance to the lowest responsible bidder.

3. Required Documentation

- a. A written description of the items or services to be procured.
- b. A list of at least three vendors or bidders contacted (if less than \$10,000) or copies of written bid solicitations to at least three vendors or bidders (if between \$10,000 and \$50,000) plus documentation of all contacts with the Commission's Small and Minority Business Division.
- c. Copies of all bids/quotes received with lowest responsible bidder.
- d. Copies of letters notifying each bidder as to whether or not they are the apparent low bidder.
- e. Copies of written contracts and/or engagement or notification letters for items or services from the lowest responsible bidder.

B. Designation of Public Agency as a Project Administrator

1. Definition

Grantees may designate, as project administrator, a qualified public agency. Grantees must notify the grants division of such designation prior to grant development.

2. Procurement Steps

- a. Prepare a resolution designating the requested public agency as CDBG grant administrator (Form 7). This resolution must be passed by the grantee's applicable legislative body.
- b. Notify the grants division of such designation prior to grant development. The grants division will reject improperly designated administrators or may require training prior to grant execution.
- c. Execute contract for administrative services.

3. Required Documentation

- a. Resolution designating non-profit agency as CDBG grant administrator. This must be submitted to the grants division prior to grant development.
- b. Executed contract for administrative services. This must be submitted to the grants division prior to or with receipt of the first Request for Payment (RFP) requesting payment for administrative services.

C. Competitive Sealed Bids

1. Definition

Competitive sealed bidding is the process by which prospective bidders are instructed to submit sealed bids for items or services in response to a formal request for bids published by newspaper or trade journal advertisement. The lowest responsible bidder will be awarded the contract. A.C.A. §14-58-303 requires grantees to use competitive sealed bidding whenever a contract for non-construction goods, services or materials will exceed \$50,000. Contracts for construction exceeding the sum of \$50,000 must be procured following competitive bidding requirements in accordance with A.C.A. § 22-9-203.

Competitive bids received pursuant to the advertisement shall be opened and read on the date set for receiving the bids by the grantee or the grantee's duly authorized representative(s). The officials designated to receive the bids shall have exclusive power to award the contract to the lowest responsible bidder. The grantee may reject any and all bids received and, by ordinance, may waive the requirements of competitive bidding in exceptional situations where this procedure is deemed not feasible or impractical.

All competitive bidding advertisements shall be published one time each week for not less than two consecutive weeks in a newspaper or trade journal of statewide circulation. The date of publication of the last notice shall be not less than seven days before the day in which bids will be opened.

In the event that all bids submitted exceed the amount appropriated for the award of the contract, and if bidding on alternatives was not required by the plans and specifications, the grantor shall negotiate an award with the apparent responsible low bidder, but only if the low bid is within 25 percent of the amount appropriated.

Should the plans and specifications for the project require bids on alternatives in addition to the base bid, the alternatives must be deductive

rather than additive, and shall be set forth in the plans and specifications in numerical order.

In the event that all bids submitted exceed the amount appropriated for the award of the contract, the grantee may determine the apparent responsible low bidder by deducting the alternates in numerical order. After making the deductions, if the cost of the project is less than 25 percent above the amount appropriated, then, and only in that event, may the grantee negotiate an award with the low bidder. Further discussion is provided in the Construction Management Chapter of the ACEDP Administrative Procedures Manual.

2. Procurement Steps

- a. Prepare a bid package for the items or services to be procured. According to A.C.A. § 22-9-101, all plans, specifications and estimates must be prepared by a state-registered professional engineer if an engineering project exceeds \$25,000, or a state-registered architect if the architectural project exceeds \$100,000. Plans and specifications for other items, goods and services (e.g., equipment, abstract services, etc.) should minimally contain specifications of the items or services requested and instructions (including appropriate forms) for bidders. See the Construction Management Chapter of the ACEDP Administration Procedures Manual for a Sample Bid Package for ACEDP funded projects.
- b. Submit plans and specifications to the Arkansas Economic Development Commission and all other applicable regulatory and funding agencies. Transmit any modifications, addenda, etc. to each agency for review and approval prior to issuance.
- c. Receive written approval of plans and specifications from all agencies.
- d. Contact the Commission's Small and Minority Business Division for potential bidders.
- e. Advertise for bids once a week for two consecutive weeks in a newspaper or trade journal of statewide circulation. To ensure compliance with state law, grantees are urged to use the Sample Bid Advertisement, Competitive Bidding (Form 8).
- f. Open bids.
- g. Prepare and certify bid tabulations, clearly marking deductive alternatives taken in numerical order and low bidders for each contract.
- h. In accordance with the General Service Administration's (GSA) Office of Government wide Policy, Cities, Counties, Contractors and Professional Service providers **MUST** be registered with the System for Award Management (SAM) **prior to obtaining a contract** and/or agreement with a project receiving Federal and/or

State funding. The System for Award Management (*previously known as CCR-Central Contractor Registration*) is a database that is used to collect, validate, store and disseminate data in support of Federal and State agency contracts and assistance awards.

SAM registrants must provide basic information relevant to procurement and financial transactions in order to complete their registration. Registrants must update or renew their registration at least once a year to maintain an active status. An active status must be maintained for the life of the contract and/or agreement.

In order to register with SAM, you must have a Data Universal Numbering System (DUNS) number. There is **NO CHARGE** for obtaining a DUNS number or for registering in SAM. A DUNS number can be obtained at www.dnb.com or call 800-424-2495. SAM has a **FREE** online registration process that can be accessed at www.sam.gov.

Verification of the City's, County's, Contractor's and/or Professional Services Provider's active SAM registration must be obtained prior to execution of all agreements and contracts. If you have questions or need additional information, please go to the SAM website or call the Federal Service Desk at 866-606-8220. You may also contact your Grant Administrator for additional assistance.

- i. Notify each bidder in writing as to whether or not they are the apparent low bidder.
- j. Award contract to lowest responsible bidder.

3. Required Documentation

- a. Plans and specifications or bid package with addenda*
- b. Approval letters from all applicable agencies*
- c. Proof of publication of bid advertisement
- d. Documentation of Small and Minority Business Unit solicitation
- e. Certified bid tabulation sheet*
- f. Verification of Contractor Eligibility Form for each contractor* (See the Construction Management Chapter of the ACEDP Administrative Procedures Manual.)
- g. Letters to each bidder regarding whether or not they were the low bidder
- h. Executed construction contract(s)*

** Denotes items to be submitted to the Arkansas Economic Development Commission as available.*

D. Competitive Negotiation

1. Definition

Competitive negotiation involves the solicitation of certain professional services by formally requesting qualifications from prospective offerors. Respondents will be evaluated on criteria other than cost with the highest qualified respondent being offered the contract upon completion of successful negotiation. If the highest qualified bidder and the procuring agent cannot reach agreement within cost parameters, then the procuring agent may negotiate with the second highest qualified bidder.

A.C.A. §19-11-801 requires all grantees to negotiate contracts for **legal, architectural, engineering and surveying services** on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable prices and prohibits the use of competitive bidding for these services. Analysis of qualifications shall be through the submission of statements of qualifications and performance data by the bidders of the aforementioned services.

In accordance with A.C.A. §19-11-803, in evaluating the qualifications of each firm, the grantee must consider the following criteria:

- a. The specialized experience and technical competence of the firm with respect to the type of professional services required.
- b. The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project.
- c. The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines.
- d. The firm's proximity to and familiarity with the project area.

The grantee shall first select three qualified firms. The grantee shall then select the firm considered the best qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected. If the grantee is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The grantee shall then undertake negotiations with the second most qualified firm selected. If a price cannot be negotiated with the second firm, negotiations with that firm shall be terminated. The grantee shall then begin negotiations with the third qualified firm.

If unable to negotiate a contract with any of the selected firms, the grantee shall reevaluate the necessary services, including the scope and reasonable fee requirements, and again compile a list of qualified firms and proceed in accordance with the above evaluation procedure.

2. Procurement Steps

- a. Prepare a Request for Qualifications (RFQ) Package for the desired professional service (Forms 9, 10, and 11).
- b. Notify the Commission's Small and Minority Business Division.
- c. The mayor/county judge will appoint a selection committee to evaluate statements of qualification received.
- d. Publish RFQ advertisement once per week for two consecutive weeks in a newspaper of statewide circulation. See Form 102 for a Sample Public Notice of Request for Qualifications (RFQ) for Professional Services. Grantees may also directly solicit RFQs in addition to the advertisement.
- e. The appointed selection committee shall open all qualifications packages and evaluate RFQs in accordance with evaluation criteria (Forms 12, 13, and 14).
- f. The committee shall compile a list of the top three qualified firms and shall enter into negotiations in accordance with the above process until a firm is selected.
- g. Notify all firms submitting qualifications of committee results.
- h. Execute contract for professional services with the selected firm.

3. Required Documentation

- a. Request for Qualifications Package
- b. Memo to file documenting the Commission's Small and Minority Business Division and other direct solicitations
- c. Proof of Publication of RFQ
- d. Transmittal letters of RFQ packages sent to respondents.
- e. Copies of responses (statements of qualifications) to RFQ from respondents
- f. Copy of selection criteria with evaluation scores for each firm or individual scored
- g. Procurement Summary Sheet listing scores of all respondents
- h. Letters to each respondent signifying award or non-award of professional services contract
- i. Executed contract for professional services. Professional services contracts must be submitted to the grants division prior to requesting funds for the applicable services.

E. Noncompetitive Negotiation

1. Definition

Noncompetitive negotiation involves the award of a contract directly to one firm (sole source) without a formal evaluation process. Such award shall be only in rare instances when:

- a. The item is available from only one source.
- b. Severe need and time constraints do not permit competitive solicitation.
- c. The time necessary to conduct a formal procurement by other means would result in undue and unreasonable added cost to the total project.
- d. Previous solicitations resulted in no response or inadequate response, i.e., inability of bidders to meet the grantee's needs, terms, and conditions.

2. Procurement Steps

- a. Submit a letter to the Arkansas Economic Development Commission requesting sole source procurement. This letter must list the name of the item or service to be procured, the estimated cost, the proposed sole-source vendor and all reasons why sole source procurement is necessary.
- b. If the service involves construction activities, a bid package will be required. See the Construction Management Chapter of the ACEDP Administrative Procedures Manual for further information.
- c. Receive approval from the grants division.
- d. Procure items or services from source.
- e. Execute contract for goods or services.

3. Required Documentation

- a. Written request, with justification, to the grants division for approval of sole source procurement
- b. Bid package for items or services procured
- c. Written approval from the grants division for sole source procurement
- d. Executed contract

III. ARKANSAS ECONOMIC DEVELOPMENT COMMISSION POLICIES AFFECTING PROCUREMENT

- A. No firm, agency, or individual may contract for more than one service per CDBG-funded project. This prohibition against multiple contracts shall be in force regardless of the source of funding for such contract or contracts.

- B. No contract will be awarded to or administered by any individual, firm or business that has a real or apparent conflict of interest.
- C. The grantee will use minority and women's businesses whenever possible and shall contact the Commission's Small and Minority Business Division: 900 W. Capitol, Suite 400, Little Rock, Arkansas 72201 or telephone (501) 682-1121 prior to requesting or advertising for bids.
- D. The grantee is responsible for establishing appropriate procedures, consistent with State law, to avoid unnecessary, duplicate or ineligible purchases.
- E. All procurements, regardless of dollar amount, must be conducted to provide maximum open and free competition. Competition should not be restricted by such things as:
 - 1. Placement of unreasonable requirements on firms necessary to qualify to do business.
 - 2. Noncompetitive practices between firms.
 - 3. Organizational conflicts of interests.
 - 4. Unnecessary experience and bonding requirements.
 - 5. All advertisements for RFQs or Invitation for Bids will be published once each week for two consecutive weeks in either the *Arkansas Democrat-Gazette* or a grants division-approved trade journal of statewide circulation. The bid opening date must be at least seven calendar days after the date of the second advertisement in accordance with A.C.A. § 22-9-203.
 - 6. The grants division reserves the right to reject any contracts that are inconsistent with the sample contracts provided within this chapter. Compensation amounts exceeding grants division-approved ceilings will be disallowed for CDBG grant reimbursement.
 - 7. All ACEDP expenditures for goods and services must be under a contract or letter of agreement executed by the grantee and the provider.
 - 8. Copies of all executed professional service and construction contracts shall be submitted to the grants division prior to requesting payment for such services.
 - 9. All procurement activities must comply with all equal employment opportunity and civil rights laws and regulations applicable to CDBG recipients. (See the Fair Housing/Equal Opportunity Chapter of the ACEDP Administrative Procedures Manual.)

IV. GLOSSARY OF PROCUREMENT TERMS

Reasonable– Refers to the offeror whose bid amount is not inappropriately low or excessively high relative to the original estimate

Responsible– Refers to the offeror who has the capability in all respects to perform fully the requirements of the contract and has the integrity and reliability which will assure good faith performance.

Lowest Responsible Bidder– Refers to the offeror who not only submits the lowest cost proposal, but also is financially able and competent to successfully complete the project as evidenced by past performance.

Lump Sum Contracts– The lump sum contract obligates the contractor to provide goods or services according to contract terms and conditions for a specified sum of money.

Unit Price Contracts– The contract is based on an estimate of the number of units needed and price per unit. The contract provides for compensation to the contractor for each actual unit constructed or supplied at the agreed-upon price.

Goods– Supplies needed to conduct and complete the project or any necessary equipment associated with the project to make it functional.

Services– Either construction contract services to erect the project under the direction and supervision of an architect or engineer or professional consultant services necessary to administer and complete the project, as well as appraisal, abstracts, surveys, legal services, etc.