

CHAPTER V

PROCUREMENT STANDARDS

OVERVIEW

The primary goal of the rules and regulations governing procurement is to ensure open and free competition for federally assisted projects. The various procurement methods outlined in this chapter all attempt to promote open and free competition for contracts. Open and free competition by nature mandates contracting opportunity is equal opportunity. The goal of the State CDBG Program is to ensure that small firms along with women and minority owned firms have an equal opportunity to participate in contract opportunities provided by the program. Requirements related to Section 3 and Minority and Women Business Enterprise (MBE/WBE) participation are in place to ensure this opportunity.

Communities may use their own procurement procedures, which reflect applicable state and local laws and regulations, **provided** that the procurement conforms to federal procurement regulations, 2 CFR Part 200, with the exception of the more stringent maximum threshold for small purchases, remaining at \$25,000, consistent with 34 RSMo, (the stricter of the two shall apply). In most cases, federal procurement policy is stricter and the community must follow the procedure outlined for all phases of the CDBG funded project.

If a community does not have a written procurement policy, the CDBG policy must be adopted for all phases of the CDBG funded project. It is recommended that communities adopt procurement policies that satisfy the needs of their particular community when using their own local money. The Missouri Municipal League can assist city governments with this task.

The CDBG grant agreement requires the community to adhere with the CDBG conflict of interest policy. The policy is stated in full in the Program Administration Chapter of this manual. If the community does not have its own conflict of interest policy, one should be adopted that defines conflicts and provides for employee standards of conduct. This policy may be incorporated into the local procurement policy.

PROCUREMENT METHODS

2 CFR Part 200 allows five methods of procurement: micro-purchase, small purchase, competitive sealed bids, procurement by competitive proposals, and procurement by noncompetitive proposals. Each of these methods is described below. Again, if the community has their own written procurement procedures, the stricter of the two methods (local or State) shall be followed. **DED must approve the method of procurement prior to contract award where fewer than three qualifications /proposals/bids have been obtained.**

*The lowest and best bidder must be selected to provide the required supplies, equipment, or services, with the exception of engineering and architectural services. Only A/E professional services may use factors other than price as a selection factor. The lowest, most responsible and responsive bidder must be selected for construction contracts. **The community must fully understand the definition of the terms “lowest and best bidder” and “lowest, most responsible and responsive bidder.”** They are often confused and interchanged, but are very different.*

- “Lowest and best” is typically used in non-construction, competitive bidding, such as equipment, professional services, and supplies. An evaluation is completed that weighs the amount of the bid with factors such as ability to perform, timeliness, character and reputation, quality of past performance, compliance with laws, quality and availability,

future maintenance and service, and compliance with bid specifications. A community may “score” bidders based on weighting that reflects which criteria is most important to them. An example is included in this chapter. The top-scoring candidate may not necessarily be the lowest bidder. However, communities that select other than the lowest bidder must provide their selection criteria to CDBG. There must be written documentation to support the selection.

- “Lowest, most responsible and responsive” is typically used for competitive construction contracts. **Lowest** refers to bid amount. **Responsive** refers to a valid and correct bid. Examples of responsiveness include bids turned in prior to the deadline, bid forms filled out correctly, bids containing all required information (bonds), etc. A community may discard a non-responsive construction bid. **Responsible** refers to financial standing, skill, facilities, capacity, experience, previous work record, or any default within the last 12-month period. Discarding a construction contractor **solely** based upon the factors of “responsibility” demands much more documentation and requires the written recommendation of the community’s own attorney.

1. Micro-Purchase

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

2. Small Purchase

Relatively simple and informal procurement method used for securing services, supplies or other property that does not cost more than \$25,000 (current State of Missouri small purchase procurement threshold), in the aggregate. If small purchase procurement is used, price or rate quotations will be obtained from an adequate number of qualified sources.

3. Competitive Sealed Bids

Competitive Sealed Bids (formal advertising) are used when the goods or services are expected to be over \$25,000 in cost. Competitive sealed bidding requires publicly solicited sealed bids and a firm-fixed price lump sum or unit price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bid, is lowest in price.

To facilitate competitive bidding, a list of prospective contractors for each type of activity should be assembled. The list should include reputable firms or persons who have a good performance record, including minority and project area contractors. Prospective contractors from the appropriate category should be invited to bid.

- The invitation for bid must be publicly, in print, advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids.
- CDBG strongly recommends the invitation to be publicly advertised a minimum of once a week for three consecutive weeks (21 days) to allow sufficient time prior to the opening of bids and allowing a period of 7 days between the final advertisement and the designated bid opening. Advertisement in Plan Rooms must be documented.

- The invitation, including specifications and attachments, must clearly describe the goods or scope of services required, thus permitting bidders to be responsive to the invitation.
- Small firms in addition to Minority/Women owned firms are to be solicited when they are potential sources. Section 3 requirements are further explained in the Civil Rights Chapter.
- All bids must be opened publicly at the time and place stated in the invitation for bid.
- A firm-fixed price contract award must be made in writing to the responsive bidder whose bid is lowest, most responsible and responsive.
- DED, HUD, and the Department of Labor maintain a list of excluded bidders. Recipients are required to contact DED to ensure that prospective contractors are eligible. (See the Labor Standards Chapter.)
- All unsuccessful bidders must be notified in writing.
- Execute contract.

4. Procurement by Competitive Proposals (Request for Proposals (RFP's)/Request for Qualifications (RFQ's))

Competitive Proposals are generally used when sealed bids are not appropriate. Regulation states RFP's/RFQ's are to be publicized and identify all evaluation factors and their relative importance. Proposals will be solicited from an adequate number of qualified sources and there will be a method for conducting technical evaluations of the proposals received and for selecting awardees. Awards are made to the responsible firms whose proposal is most advantageous to the program, with price and other factors considered.

- The Competitive Proposal process is most typically used for the procurement of professional services.
- Procurement for professional services need not be formally advertised, unless RSMo Section 50.660.1 is applicable. However, there must be a competitive procurement process wherein a number of qualified professionals are invited to submit proposals. Solicitation of professional administration services must include all persons on the CDBG Administration List and the Regional Planning Commission located in the project area.
- Price is not used as a selection factor in procurement of professional architectural or engineering (A/E) services. A/E firms may also be procured under qualifications for surveying and other services that require an A/E degree. After the lead qualifying firm is selected, then a contract price may be agreed upon. If there is no such agreement, that A/E firm may be eliminated and discussions may begin with the second most qualified firms. Price is still important to the project. It is just not included in the evaluation phase.
- For professional service firms other than A/E, using the Request for Proposals method, price is a component of the evaluation phase. In the event of including solicitation for a grant writer using the same RFP for grant administration solicitation please identify that the proposal must clearly separate the cost associated with grant preparation and administration services.
- The Request for Proposals method may be used for other types of professional service providers. Price must be a factor when selecting professional service firms other than A/E.
- All proposals received must be evaluated. A written method for evaluation, which includes the significant factors used to determine the contract selection award, must be prepared and publicized along with the Request for Proposals. **Contact DED in the event of receiving less than three proposals.**

- If professional services are paid from local funds, the grantee may select the firm of choice adhering to state statutes and local purchasing policy.
- Applicants must comply with state law, HB 322 (RSMo 1983, Section 8.285-8.292), in the procurement of architectural, land surveying, or engineering services, unless the city/county has its own procedure. In any event, 2 CFR Part 200 must be complied with if CDBG funds are involved in the compensation of such services.
- Only fixed price (a specified price to be paid when the items or services are delivered and accepted) or cost-reimbursement (price is usually reimbursed as costs are incurred) may be awarded.
- Please note that CDBG funds cannot be used to pay for services dated prior to the date of the funding approval with the exception of environmental review services procured as part of the grant administration contract.
- The basis for selection must be documented in writing for grant files.
- All unsuccessful bidders must be notified in writing.
- Execute contract.

5. Procurement by Noncompetitive Proposals

A noncompetitive proposal is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. The mere fact that a contractor is performing other consultant services for the grantee is not in itself an adequate justification for a non-competitive proposal award. Circumstances under which a contract may be awarded by noncompetitive proposals are limited to the following.

- After solicitation from a number of sources, competition is determined inadequate.
- The items or services required are available only from one source.
- The State CDBG Program authorizes the noncompetitive method.
- A public emergency is such that the urgency will not permit a delay beyond the time needed to employ one of the other methods described above.

Missouri Reciprocity Law

Missouri State Statute 34.076 says that Missouri communities are legally compelled to award contracts to Missouri bidders when the bid is within the percentage of bid preference established by another state's reciprocity law. This law applies to all bids over \$500.00. Specific inquiries regarding this requirement should be directed to the Missouri Office of Administration, Division of Purchasing, at (573) 751-2387.

GENERAL PROCUREMENT PROCEDURES

Recipients must maintain records that document the rationale for the method used for procurement, selection of the contract type, contractor selection or rejection, and the basis for the selection including cost or price. In addition, all contracts other than small purchases shall contain provisions, which describe administrative, contractual, or legal remedies when contractors violate contract terms and provide for appropriate damages. The grantee is responsible to solicit for grant administration services. It is a conflict of interest for a grant administrator cannot help the grantee with the procurement of grant administration if they intend to submit a proposal. This includes developing the Request for Proposals and handling the solicitation process. The grant administrator may provide the grantee with the procurement chapter from the CDBG Administration Manual and provides samples included in the procurement chapter. The grant administrator may also suggest that the grantee contact the State CDBG program for technical assistance.

Bonding and Insurance

2 CFR Part 200 specifies bonding and insurance requirements for federally supported activities. In carrying out CDBG activities (except professional services contracts), CDBG recipients must establish bonding and insurance requirements that ensure completion of CDBG funded construction contracts in the event of contractor or subcontractor default.

In regard to \$25,000 being the small purchase threshold for the Missouri State CDBG Program, any contract with an amount over \$25,000 is required to produce documentation of bonding within two weeks of contract award. The contractor will obtain a performance bond for 100% of the contract price to ensure completion of the contract, and a payment bond for 100% of the contract price, if contract price exceeds \$50,000, on the part of the contractor to ensure payment to all persons supplying labor and materials.

In the event of the surety performing under a takeover agreement, the bonding company must produce evidence of participation in the E-Verify program.

Grantees are free to use their requirements relating to bid guarantees, performance bonds, and payment bonds for contracts of \$25,000 or less in value.

Timeline for Construction Procurement

1. Determine that the Request for Release of Funds for the activity or project related to the proposed construction contract has been approved by DED. (See the Environmental Review Chapter.)
2. Prepare the specifications. CDBG bid terms and conditions and contractor certifications are to be included in all bid documents and construction contracts. Please refer to the Contract Management Chapter of this Manual.
3. Secure applicable Davis-Bacon wage rate decisions from DED, as discussed in the Labor Standards Chapter. Review wage decisions from DED to determine if any additional classifications are necessary. Contact DED 10 days prior to bid opening to verify that the Federal wage decision has not been changed. If changes have been made, send them as an addendum to all contractors who received the bid package.
4. Include the correct goals of the Federal Equal Opportunity Construction Contract Specifications for minorities and females in the bid document and contracts. These requirements are governed by the *Federal Register* regulations of October 29, 1978 and September 7, 1979. Minority participation goals are detailed in the September 7, 1979 regulations. These goals are applicable to all projects of the contractor, not just the project(s) funded in whole or in part by CDBG funds. Therefore, each construction craft and trade in the contractor's work force, which is required in an area covered by the goals and timetables, falls under these provisions. Recipients must ensure that bid documents incorporate these goals.
5. Include all items listed in the Contract Management Chapter in all specifications for bidding and contracting.
6. Some recipients require their city attorney to review the bid documents according to their own ordinances for liability purposes.
7. **Publish Request for Bids** in a newspaper of general circulation once a week **for three consecutive weeks** (21 days) prior to bid opening. Grantees must directly solicit minority and women-owned firms. A longer advertising period may be necessary for more complex projects to allow bidders more time to prepare their proposals. Retain a newspaper copy and/or affidavit of each advertisement in the CDBG Contract Management file. Exceptions to the publishing requirement as stated in this section must be preapproved by DED.

8. Addenda to the bid documents, if any, must be sent to all potential bidders who obtained the original bid documents. Addenda cannot be issued after 72 hours prior to bid opening, or as prescribed by Missouri law.
9. Maintain a log of bidders who were sent or obtained bid documents. All bids received during the bidding period should be logged with the name of the bidder and the time and date of receipt. No bid may be accepted if it is late.
10. Hold a public meeting to open bids. All bids must be read aloud during this meeting. Minutes of the meeting must be maintained to document the project, the time and date of bid opening, and the bidders and bid amounts in order of opening.
11. Review all bids to determine if they are legally and technically responsive. Bidders must be evaluated as to their ability to perform as previously defined. The contract must be awarded to the **lowest, most responsible and responsive bidder**. If all the bids exceed the budgeted amount, reevaluate the specifications to determine whether one aspect of the project was inaccurately described. In this situation, it may be necessary to reject all bids.
12. Cost plus a percentage of cost and percentage of construction cost method of contracting are prohibited. **All contract fees shall be based upon a unit price or "cost-plus-fixed-fee."** All contracts must include a total dollar amount.
13. Negotiation with bidders prior to bid opening is prohibited. **Negotiation with bidders when bids exceed available funding:** If the bid from the lowest responsible most responsive bidder exceeds available funds, the grantee may negotiate with the apparent low bidder(s) to obtain a contract price within available funds. "Available funds" are those budgeted by the grantee for the requirement and designated as such prior to the issuance of the Invitation for Bid. Negotiation on the part of the bidder is strictly voluntary. To ensure fair and open competition among bidders, the State of Missouri CDBG program views negotiation to be defined as reducing contract units at the bid unit prices and should not exceed 25% of the **total contract bid amount**. It should be checked that any reduction of contract units would not result in a change of the low bidder.
14. The Grantee can either reject all bids or provide needed funds from other sources. Prior to the bid process, the Grantee can take action to help mitigate problems that arise from bids that exceed allowable funds. If the Grantee has reason to believe that available funds will be inadequate for the full scope of proposed work, it can request deductible or add-on alternatives in the bid process. When deductible or add-on alternatives are requested, the bid document must specify the method and order in which alternatives will be applied in determining the low bid. Whenever estimated costs are very close to the amount of available funds or the cost estimates are based on roughly comparable projects, the deductible alternative approach is very useful. It can eliminate the need to respecify the bid package and repeat the entire bid process with unavoidable delays in the project. Do not use deductible alternatives that reduce the original scope of the project that was funded.
15. Once all bids have been received, **references should be checked**. The only way for a community to secure good information about how a person or firm performed similar duties is to call the other cities and counties and ask their opinion.
16. **Prior to awarding the contract**, the Grantee must obtain verification of contractor eligibility from DED. Recipients should request a written letter confirming eligibility from DED. In addition, verify that the contractor is registered with the Secretary of State and has a valid certificate to do business in the State of Missouri. You must also check with DED to ensure that the bonding company that the contractor is using to provide the payment and performance bonds is on the Department of the Treasury's Listing of Approved Sureties. It is vital that you furnish the correct spelling and the exact name of the firm(s) for all of the above.

17. Award the contract. The contract must be awarded to the lowest, most responsible and responsive bidder. If the contract is awarded to other than the lowest bidder, a written statement documenting valid reasons why the lowest bidder(s) was not selected must be prepared and submitted to DED for approval prior to contract award. Ensure that all compliance provisions and environmental clearances have been met before awarding the contract.
18. Send a Start of Construction Notice to DED within ten (10) days of the contract award. This notice is included in the Labor Standards Chapter.
19. A pre-construction conference must be held to acquaint the contractor with Federal and Missouri requirements such as the Labor Standards Provisions, Equal Employment Opportunity Requirements, and Section 3. Requirements for weekly wage records and employee interviews should be specifically addressed at this conference. It is also appropriate to brief the contractor on how payments will be processed, what forms are to be used, and how the CDBG office will monitor financial, program, and contract compliance. A pre-construction conference report should be prepared to document the subject(s) discussed at the meeting and placed in the Contract Management file.
20. Send a Notice to Proceed to the contractor. This document officially notifies the contractor that construction may begin.
21. A copy of the Certificate of Completed Work must be obtained from the project engineer to ensure completion of the project. This certificate must cover all work included in the project, including other funding agencies and grantee's cash and in-kind. Ten percent of the construction inspection funds will be withheld until a Certificate of Completion has been issued.

SAMPLE
REQUEST FOR PROPOSALS

PRESELECTION OF PROFESSIONAL ADMINISTRATION SERVICES

The City/County of (XXXX) requests proposals for administrative services to assist in a proposed project financed with \$(insert dollar amount) in Community Development Block Grant (CDBG) funds. (Insert Project Description.)

Administration services shall include, but are not limited to, the implementation of the project in conformance with the following CDBG compliance area: *NOTE! Must insert applicable areas of compliance applicable to the project.*

Information provided to the city shall include at a minimum:

1. The specialized experience and technical competence of the firm with respect to CDBG grant administration. IF APPLICABLE please include “*and related work on jointly funded projects with RD and DNR*”
2. The past record of performance of the firm with respect to such factors as accessibility to clients, quality of work, and ability to meet schedules
3. The capability of carrying out all aspects of grant related activities
4. Cost of services
5. References from previous clients of related work with the firm within the past five years
6. Documentation of compliance with E-Verify requirements

PLEASE IDENTIFY the criteria above that shall receive priority weighting in the final selection.

The above information should be submitted no later than (DATE), (TIME), (named location & address). For more information contact city clerk/county clerk at (PHONE NUMBER).

The City/County of (XXXX) is an Equal Opportunity Employer and invites the submission of proposals from minority and women-owned firms.

The following sample of an evaluation matrix is for your use as appropriate for your specific situation. Samples provided by CDBG should not replace advice/review from an attorney. The weights and rating values assigned should be the same as those listed in the Request for Proposals. Each rater should complete an evaluation for each firm submitting a proposal.

Then highest number represents the most value for each column. WEIGHT column: 1-10 points depending on value to the project and level of importance (assigned by rating group and must be identical on all evaluations), in each area, to the particular project. RATING column: 1-5 points. In this column you rate the firm based on each qualification. Multiply the rating by the weight for each category and enter the total. Add all totals to establish final score for firm.

Name of Firm:

Contact Person:

Project Description

Individual Evaluation

	WEIGHT 1-10	X	RATING 1-5	=	Total
Specialized Experience & Competence related to CDBG					
Past record of performance of firm with respect to such factors as accessibility to clients, quality of work, and ability to meet schedules					
Capability of carrying out all grant related activities					
Cost Comparison					
References					
Met requirements for submittal					

Name of Reviewer:

Grand Total:

**SAMPLE FOR COMBINED PRESELECTION
REQUEST FOR QUALIFICATIONS
PROFESSIONAL ENGINEERING SERVICES:**

PRELIMINARY ENGINEERING, DESIGN, AND INSPECTION SERVICES

The City/County of (XXXX) requests qualifications for preliminary engineering services, subsequent engineering design services, and construction inspection services, to assist in a proposed public facilities project to be partially financed with Community Development Block Grant (CDBG) funds. The remainder of the project is being financed by the city's/county's \$(XXXX) (if applicable - bond issue.) The project consists of (identify project scope.)

Information provided to the city/county must include at a minimum:

1. The specialized experience and technical competence of the firm with respect to water system improvements or related work
2. The capacity and capability of the firm to perform the work in question, including specialized services, within a period of twelve months beginning (INSERT DATE)
3. 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
4. The firm's proximity to and familiarity with the area in which the project is located
5. References from previous clients of related work with the firm within the past five years
6. IF APPLICABLE TO THE PROJECT "*References and experience on jointly funded CDBG/RD/DNR grant projects*"
7. Documentation of compliance with E-Verify requirements

The firm will be selected based on the above qualifications. Once the most qualified firm is selected, a cost for preliminary engineering will be negotiated separately from the cost for engineering design. Contracting for these two activities shall occur separately and costs/payments associated with each will be clearly defined. Contracts executed for engineering design and construction inspection services shall be contingent upon the award of the grant and commitment of all project funds.

The above information should be submitted no later than (DATE), (TIME), (named location & address). For more information, contact city clerk/county clerk at (PHONE NUMBER).

The City/County of (XXXX) is an Equal Opportunity Employer and invites the submission of proposals from minority and women-owned firms.

COUNTY PROCUREMENT AND CONFLICT OF INTEREST POLICY

BE IT RESOLVED: that the County of _____ hereby notifies the Department of Economic Development that its procurement is completed in accordance with Chapter 50 of the Missouri Revised Statutes, County Finances, Budget and Retirement Systems, Sections 50.760 to 50.790, including all other applicable sections and applicable waivers that have been established under Section 50.783.

FURTHER BE IT RESOLVED: that the County of _____ operates in accordance with Chapter 105 of the Missouri Revised Statutes; Public Officers and Employees – Miscellaneous Provisions regarding conflict of interest of any person who is designate as a decision-making public servant.

SIGNED THIS _____ DAY OF _____ 200__

Presiding Commissioner

Attest:

County Clerk