

Chapter 4: Procurement

Introduction

This chapter describes the policies and procedures that must be followed when entering into contractual agreements with other entities. Services often procured by grantees to complete KCDBG projects include certified professional grant administrators, engineers, architects and construction contractors.

Section 4-A. KCDBG Procurement Code

All procurements funded in whole or in part with KCDBG funds must comply with the applicable federal requirements found in 2 CFR Part 200 (referred to as the Super or Omni Circular). The goal in using these procurement procedures is to achieve maximum open and free competition.

2 CFR Part 200.318

Each grantee (and nonprofit subrecipient) shall adopt and abide by the KCDBG Procurement Code (Attachment 4-1), which shall apply only to procurements funded with KCDBG dollars, as authorized in 2 CFR 200.318. The KCDBG Procurement Code follows the Kentucky Model Procurement Code (KRS Chapter 45A), except where the Model Procurement Code conflicts with federal procurement standards and where DLG has stricter requirements. The KCDBG Procurement Code includes:

Attachment 4-1:
KCDBG Procurement Code

- ✓ A code of conduct to govern the performance of the grantee's officers, employees or agents in contracting with KCDBG funds and to ensure adherence to the conflict of interest and disclosure requirements (outlined in Chapter 1: Project Administration); and
- ✓ A requirement that positive efforts be made to use small, minority, female, low-income and/or locally-owned businesses; and
- ✓ A requirement that contracts be awarded, to the greatest extent feasible, to businesses that provide economic opportunities for low and very low-income persons residing in the project area.

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Section 4-B. Overall Procurement Requirements

Environmental Review and Bidding

As stated in Chapter 2: Environmental Review, it is HUD policy as of April 2011 that the environmental review process be completed prior to bidding to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review.

Chapter 2: Environmental Review

Minority Business Enterprises/Women Business Enterprises (MBE/WBE)

Background

The regulations at 2 CFR Part 200.318 requires grantees to take affirmative action to contract with small and minority-owned firms and women business enterprises. DLG does not require set asides or participation quotas, but grantees are expected to make special efforts to award contracts to MBE and WBE firms. Goals for minority participation in construction (by county) are provided in Chapter 6 as Attachment 6-3.

2 CFR 200.318
Attachment 6-3:
Goals for Minority Participation
in the Construction Industry

Requirements

Grantees are required to notify MBE/WBE firms of the opportunity to bid on KCDBG funded contracts. Each grantee must ensure appropriate outreach has been completed to ensure MBE/WBE firms have the opportunity to participate in the KCDBG program. The Kentucky Procurement Technical Assistance Center (PTAC) has been reinstated and may be available to post bid notifications or provide bid matching services with MBE/WBE businesses for KCDBG grantees. A form is provided as Attachment 4-2 for this purpose. Refer to www.kyptac.com or contact their office at (859) 251.6019. Grantees will also need to establish additional outreach steps to comply with the MBE/WBE requirements (see below).

Attachment 4-2:
PTAC Bid Match Form

Suggested Outreach

It is the grantee's job to ensure the MBE/WBE firms are notified of any contracts ready for bid. Specific measures a grantee may take to meet M/WBE goals include:

- ✓ Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources.
- ✓ Maintain a list of qualified small, minority, and female owned businesses.
- ✓ Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U. S. Department of Commerce and the Community Services Administration as required.
- ✓ Including MBE and WBE firms on solicitation lists and sending them an Invitation to Bid.
- ✓ When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBEs.
- ✓ Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBEs.
- ✓ If any subcontracts are to be let, requiring the prime contractor to take the above affirmative steps.
- ✓ Setting aside a percentage of KCDBG funds to be awarded to MBE/WBEs.
- ✓ Including MBE/WBE criteria with additional points in selection criteria for professional services procurement.

Resources for Identifying MWE/WBE Contacts

- ✓ Kentucky Procurement Technical Assistance Center (KYPTAC) for bid match services. www.kyptac.com or (859) 251.6019.
- ✓ Associated General Contractors of Western Kentucky maintains a list of DBE, MBE and WBE contractors. <https://www.agcwky.org/members?mbe>
- ✓ Associated General Contractors of Kentucky maintains a listing and will share if you contact them at (502) 537-5243 or email jmckibben@agcky.org.
- ✓ Kentucky Department of Transportation Small Business & Civil Rights section has a link for Disadvantaged Business Enterprises which includes minority, disadvantaged, and women business enterprises.
 - More information on their programs are available at <https://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/Small-Business-Development.aspx>. Tony Youseffi is the contact at (502)782.4810.
 - Certified DBE directory: <http://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/Certified-DBE-Directory.aspx>

Section 3 Economic Opportunities**Background**

Section 3 of the Housing and Urban Development Act of 1968, as amended and implemented at 24 CFR Part 135, requires the provision of training, employment and other economic opportunities that arise through certain HUD-financed housing and community development assistance to lower-income residents of the project area, particularly residents of government-subsidized housing, to the greatest extent feasible and consistent with federal, state and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the project area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.

Section 3 of Housing and Urban
Development Act of 1968
24 CFR Part 135

Requirements

Section 3 applies to recipients of \$200,000 or more in KCDBG assistance. The types of projects that are covered by Section 3 are housing construction, demolition, rehabilitation or other public construction (e.g., infrastructure or community facilities).

Contractors or subcontractors that receive contracts in excess of \$100,000 for housing construction, demolition, rehabilitation or other public construction are required to comply with the Section 3

regulations in the same manner as the grantee that provided the funding to them. Refer to Chapter 5 and the Contracts Document Guide available on DLG's website for additional information on Section 3. The Contracts Document Guide provides not only language to include in construction contracts, but also a Contractor Section 3 Plan Format, which is required to be completed by the contractor/subcontractor to demonstrate compliance with Section 3.

In cases where a grantee receives KCDBG assistance of over \$200,000 for a project or activity, but no housing or other construction contracts exceeds \$100,000, the Section 3 requirement applies only to the grantee.

The recipient and, if applicable, its contractors/subcontractors must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by:

1. Awarding 10% of the total dollar amount of covered construction contracts to Section 3 businesses; and
2. Hiring Section 3 residents for 30% of *new* employment opportunities.

In order to satisfy the Section 3 requirements, a grantee must develop and implement a Section 3 Action Plan that outlines how it will achieve these goals. The plan must state the grantee's commitment to Section 3 and outline steps to implement it. This could include setting aside dollar amounts or a number of contracts to be awarded to businesses that employ low-income residents in the area. A sample Grantee Section 3 Action Plan is provided as Attachment 4-3.

Attachment 4-3:
Grantee Section 3 Action Plan

It is important to document efforts made to comply with Section 3. Files should contain memoranda, correspondence, advertisements, etc., illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). Documentation will show the steps taken to implement the plan, and will most likely cross-reference information in other files, such as procurement and construction contracting. The mere existence of a Section 3 Action Plan is not sufficient. Affirmative attempts to reach Section 3 goals must be made.

Finally, grantees are required to report on Section 3 annually. The report format is provided as Attachment 4-4 to this chapter and must be sent to DLG by July 30 each year of project implementation. Contact DLG for guidance on completing the report, if necessary.

Attachment 4-4:
Section 3 Report (HUD Form
60002)

Caution: Compliance with Section 3 does not supersede other applicable laws and regulations. The 1992 amendments specifically state that Section 3 requirements will be consistent with federal, state, and local laws and regulations. Therefore, the Omni Circular procurement standards cannot be violated to comply with Section 3.

Conflicts of Interest

Background

The procurement process must be fair to all those seeking to do business with a Grantee or subrecipient. Nothing is more detrimental to a successful procurement operation than to have the relationship between the Grantee and the contractor questioned regarding real or apparent

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conflicts of interest. Conflict-of-interest issues deal with the relationship between the parties and financial gain. Essentially, those that are in positions of trust, such as local officials, employees, consultants, family members, and business partners, cannot personally gain from procurement transactions. Furthermore, Grantees should not overlook the fact that this rule applies to both actual conflicts of interest and “apparent” conflicts. Too often, staff members mistakenly believe that indirect or noncash benefits would not be considered a conflict of interest. However, vendor or contractor donations to employee fund-raising drives, event tickets, meals, or gifts of any kind could potentially be considered conflicts of interest. For more information on conflicts of interest, see Chapter 1: Project Administration.

Requirements

Grantees should be thoroughly familiar with the conflict of interest requirements in 2 CFR Part 200, Kentucky Revised Statutes and the CDBG regulations. Any possible conflict of interest issues must be brought to the attention of DLG immediately. The sooner a real or apparent conflict of interest is identified the better. If any potential conflict is known at the time of application, it must be brought to the attention of DLG staff.

Separation of Duties

Grantees must be vigilant to eliminate the possibility of fraud in the procurement process. One of the most important checks and balances to limit fraud is through the separation of duties of staff. The person tasked with ordering the goods or managing the procurement process should be different from the person receiving and accepting the goods and the person paying for the order. When this is not possible due to the limited size of staff, grantees should have additional rules in place, such as limiting dollar authorizations and periodic reviews by an independent individual. Grantees should ensure that only designated individuals have the authority to make binding contracts. If the grantee has a small staff, there should be some procedure in place to provide for independent oversight. The grantee’s procurement procedures should outline the positions involved in the procurement process and the responsibilities of each person, a formal system of authorization and review, and separation of duties. The rule of thumb should be that if an employee touches the money, mail, or goods purchased, he or she should not touch the books.

Open Competition

KCDBG procurement must be conducted in a manner that ensures full and open competition consistent with the standard set forth in 2 CFR Part 200 and the KCDBG Procurement Code. **All** services to be provided must be procured in accordance with 2 CFR Part 200 and the KCDBG Procurement Code. Actions that might restrict competition would include:

- ✓ Placing unreasonable requirements on firms in order for them to qualify to do business.
- ✓ Requiring unnecessary experience.

Section 4-C. Methods of Procurement

Grantees must select from one of four methods of procurement based on the type of products and/or services being procured and their cost.

Small Purchase Procedures

For purchases of less than \$50, efforts must be made to get the lowest and best price. The grantee is not required to maintain written records for these purchases.

Otherwise, small purchase procedures entail a relatively simple and informal process that can be used when goods *and* services, in the aggregate, cost no more than \$20,000. Under this process, the grantee should:

- ✓ Obtain price or rate quotations either by phone or in writing from an adequate number of qualified sources (at least three sources).
- ✓ Maintain documentation regarding the businesses contacted and the prices quoted.
- ✓ Make the award to the lowest responsive and responsible source.
- ✓ Prepare and sign a contract formalizing the scope of work and the terms of compensation.

Competitive Sealed Bids

The Competitive Sealed Bids method of procurement is used when clearly detailed specifications for the goods or services to be procured can be prepared, and the principle basis for award is cost. The sealed bid method is the preferred method for procuring KCDBG-funded construction work with estimated costs in excess of \$20,000. (See Chapter 6: Labor Standards and Construction Management for detailed information on preparing construction bid documents.) The following requirements apply to the competitive sealed bid procurement process:

KRS 45A.365

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Construction Management

- ✓ Competitive sealed bids are initiated by publishing an Invitation for Bids (IFB) (sample provided as Attachment 4-5).
- ✓ The IFB must be advertised in the newspaper of largest circulation in the jurisdiction at least one time for not less than seven days or more than 21 days before the date set for the opening of bids.
- ✓ The IFB must also be publicized by distributing the IFB to a list of qualified contractors.
 - Remember, the grantee must include MBE /WBE and Section 3 firms on solicitation lists and send them an Invitation for Bid.
- ✓ The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- ✓ 2 CFR Part 200 requires a bid guarantee from each bidder equal to five percent of the bid price. This guarantee serves as an assurance that the chosen contractor will execute the contract within the time specified.
- ✓ All bids must be publicly opened at the time and place stated in the Invitation for Bids.
- ✓ The bids must be tabulated and reviewed.
- ✓ Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

KRS 424.120

Attachment 4-5:
Advertisement for Bids

- The contract awarded must be a firm-fixed-price contract (lump sum or unit price with a maximum amount identified).
- ✓ If alternates (additives or deducts) will be taken, the bid documents must be clear as to what order those alternates will be applied.

Competitive Negotiation

This method of procurement is used if the selection can be based on factors other than cost, such as experience and capacity. Procurement of architectural, engineering, planning and administrative services may fall under this category. Grantees shall seek permission from DLG prior to using competitive negotiation for contracts other than architectural, engineering, planning or administrative services. Only fixed-price contracts or hourly contracts with a not-to-exceed figure may be awarded.

Caution: Cost plus a percentage of cost contracts is not acceptable. This means that standard architectural and engineering contracts cannot be used without changing the fee structure that is based on a percentage of costs.

Competitive negotiations are initiated by publishing a Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selections (generally only for engineering services). In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the grantee should provide or make available any materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions. A sample RFQ is provided as Attachment 4-6 and a sample RFP is provided as Attachment 4-7 to this Chapter.

Attachment 4-6:
Sample Request for Qualifications
(RFQ)

Attachment 4-7:
Request for Proposal (RFP)

The following requirements apply to the competitive negotiations procurement process:

KRS 424.120

- ✓ The RFP or RFQ must be advertised in the newspaper of largest circulation in the jurisdiction at least one time for not less than seven days or more than 21 days before the date set for the opening of proposals.
 - The grantee must include MBE and WBE firms on solicitation lists and send them the RFP or RFQ.
 - If an RFP is used, it should specify the scope of services to be provided and the type of contract to be used, which should be either fixed price or an hourly rate with a not to exceed figure.
 - An RFP should also:
 - Specify that cost and pricing data is required to support the proposed cost;
 - State anticipated start and completion dates; and
 - List evaluation criteria that will be used in ranking proposals.
- ✓ The RFP or RFQ must also be distributed to a list of qualified firms.

- ✓ All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing. Attachment 4-6 provides a sample Professional Services Evaluation. Attachment 4-7 provides a sample Review Panel Selection Summary.
 - There must be at least two proposals from qualified sources to permit reasonable competition.

Attachment 4-8:
Sample Professional Services
Evaluation
Attachment 4-9:
Sample Review Panel Selection
Summary

- ✓ For both RFPs and RFQs, selection is made on the basis of the most responsible offer or price with consideration given to the factors identified in the RFQ or RFP.
 - For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.
- ✓ The grantee must maintain documentation of cost reasonableness for all services and reasons for selection.
- ✓ The grantee must prepare and sign a contract formalizing a scope of work and the terms of compensation.
- ✓ The grantee should promptly notify unsuccessful offerors.

Non-Competitive Negotiations

Non-competitive negotiation is procurement through solicitation of a proposal from one source, and is often referred to as sole source procurement. A contract may be awarded by noncompetitive negotiation *only* when the award is infeasible under small purchase procedures, competitive sealed bids, or competitive negotiations and one of the following circumstances applies:

- ✓ There is some public emergency that will not permit delay resulting from competitive solicitation (the grantee must declare an emergency as authorized by law); or
- ✓ The results of the competitive negotiations are inadequate; or
- ✓ The product or service is available only from a single source.

Caution: The use of the non-competitive negotiations procurement method must be authorized in writing by DLG prior to utilizing this method.

The following requirements apply to the non-competitive negotiations procurement process:

- ✓ Negotiations must be conducted with the selected company regarding a scope of work and price; and
- ✓ Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

Section 4-D. Other Procurement Issues

Bid Overages

Overview

2 CFR 200.318 requires grantees to perform a cost or price analysis in connection with every procurement action, including competitive sealed bids. Too often, inadequate or incorrect cost analyses result in cost estimates that are too low and, consequently, low bids coming in over budget. Such bid overages can unnecessarily delay time-sensitive projects, and rectifying the overage is often costly and time consuming. Grantees shall carefully conduct and review their cost estimates and to utilize safeguards such as deductible alternates in order to minimize the risk of overages that will require a re-bid. Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. This section governs the process for dealing with such a situation.

Options

The following options are available for awarding a bid following an overage:

1. Obtaining additional funds from another source and continuing with the original IFB.
2. Rejecting all bids, revising project scope and bid specifications, and issuing a revised IFB (competitive sealed bid) open to the entire public; or
3. Conducting competitive negotiations with **all** bidders. (**Grantees must seek pre-approval from DLG for this option**).

Competitive negotiations under option (3) must take place under the following criteria:

1. If discussions pertaining to the revision of the specifications or quantities are held with any bidder, all of the bidders shall be afforded an opportunity to take part in such discussions.
2. After discussions with all bidders, the grantee shall revise the scope of work accordingly and issue an IFB open to all bidders, providing for expedited proposals. No advertisement is required, but the grantee shall allow **at least seven days** for all bidders to submit proposals.
3. The IFB shall be awarded on the basis of **lowest bid price**.

Deductible Alternates

Grantees **shall use** deductible alternates unless doing so is not practical or not feasible. When deductible alternates are requested, the bid document issued by the grantee must specify the method and order in which alternates will be applied in determining the low bid. Drawings must also clearly show the alternates.

For example, a project might involve the construction of a new community center that includes a portico and a small out-building to accommodate future expansion. The bidding instructions would indicate which items are to be bid as deductible alternates and the order of priority in which they are to be deducted. In this example, assume the portico and out-building are to be bid as deductible alternates, and the order of priority for deducting is first, the out-building, and second, the portico. The grantee would go back through each bid (not just the lowest one) and first subtract the amount each bidder estimated for the out-building

from the total amount she/he bid for the project. The grantee would then check to see if any of the adjusted bids are within budget. If so, the grantee can award the bid to the bidder with the lowest adjusted bid. If not, the grantee would repeat the process, this time deducting the cost of the portico from the adjusted bid of each bidder. Depending on the number of deductible alternates specified, the process can be repeated until one of the adjusted bids is within budget.

It is imperative that the grantee's IFB or the information for the bidders packet explicitly states the method of award, including use of any deductible alternates. Failure to be clear and precise on the procedures that will be utilized can cause confusion or disputes among bidders that could, at the very least, cause project delays. DLG recommends that the grantee's attorney be consulted in these cases.

Grant Administration Services

To assist with administering a grant, grantees may consider procuring the services of a certified professional grant administrator. As set forth in Section 1-A, above, the Commonwealth of Kentucky requires that any person administering CDBG funds be certified by first participating in the CDBG Administrator Certification training and passing the subsequent exam (see Chapter 1). It is important to note that the services of the professional grant administrator must be obtained by following the procurement requirements set forth in this Chapter. DLG maintains an updated list of certified CDBG administrators, which might be helpful for procurement.

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An agreement must be signed and executed, formalizing the scope of work and the terms of compensation. Documentation verifying reasonability of cost must also be maintained.

[Chapter 5: Contracting](#)

A grantee may instead choose to perform some or all of these services with their own staff member that is a certified administrator, and can be reimbursed for the time an employee spends working on the KCDBG project. It is important to note that time sheets must demonstrate the time spent on the KCDBG project and only time associated with the KCDBG project may be charged to the KCDBG project.

Front-end Costs

Front-end costs are those incurred by the applicant community before funding is obtained. Examples of front-end costs include the preparation of the application, preliminary engineering, and services necessary to prepare the application. A grantee often will contract with consulting and engineering firms to perform specific planning and design functions prior to a project being funded. Federal procurement procedures do not apply if non-KCDBG funds are used to pay for these up-front professional services. All services to be provided must be procured in accordance with 2 CFR 200 and the KCDBG Procurement Code. The grantee is, of course, still bound by local procurement codes when procuring any goods and services.

Private Sector Entities

In economic development projects, it is common for a private sector participating party to procure assets or services. Private sector entities, even when financed with federal funds, are not subject to the provisions of the Omni Circular. Therefore, most participating party procurements will not be monitored. However, cost reasonableness, as required by the Omni Circular, does apply to the grantee and its expenditures. In the absence of procurement, the grantee will be required to evaluate costs to

determine if they are reasonable. Private sector entities may be required to provide some comparative cost information to assist the grantee in this evaluation process and the grantee should maintain this documentation in its files.

Sales Tax on CDBG Projects

Kentucky law prohibits contractors from claiming that a project is exempt from sales tax merely because the project is being constructed or purchased by a governmental entity. See KRS 139.470 and 103 KAR 26:070. A contractor may not “borrow” a Grantee’s tax-exempt status when purchasing equipment, materials or supplies for use on a CDBG project.

Grantees are strongly cautioned against purchasing supplies and equipment directly for CDBG projects in order to save sales tax. A variety of legal and contractual issues, including invalid warranty claims, may arise from such transactions. Grantees should contact DLG to discuss these issues.

If, despite these concerns, a grantee still desires to purchase equipment, materials or supplies for a CDBG project, they may do so *only* if the grantee procures all of those materials according to the KCDBG Procurement Code. Federal and state laws require all city and county purchases to be competitively procured. Purchasing these items directly from the contractor’s preferred vendors, even when the contractor itself has been properly procured, *does not* satisfy this requirement. Grantees that purchase equipment, materials or supplies must provide proof that the purchases were competitively procured by the Grantee. Failure to provide such documentation may result in the purchases being deemed ineligible for reimbursement with CDBG funds and/or may require repayment of improperly withheld sales tax.

Section 4-E. Procurement of Professional Services

This section describes steps that are required to help ensure grantees comply with federal and state procurement requirements in the procurement of professional services. The grantee cannot turn these steps over to their existing contractor to complete as this would violate the goal of maintaining open competition. All services to be provided must be procured in accordance with 2 CFR 200 and the KCDBG Procurement Code.

Step 1: Establish a Contract Procurement File

The grantee should create and maintain a procurement file in order to document compliance with procurement requirements. At the end of the process, the procurement file must contain the following items:

- ✓ Tear sheets of advertisements requesting proposals or qualifications;
- ✓ A listing of firms that were sent the RFP/RFQ directly;
- ✓ A copy of the RFP/RFQ, including a description of the method used to select professional services;
- ✓ RFQ qualification statements received or RFP responses received;
- ✓ Written evaluation of statements/responses received;
- ✓ Written statement explaining the basis for selection; and
- ✓ Written evidence that proposals/costs were determined to be reasonable.

Step 2: Solicit Proposals

The first step in preparing a solicitation is determining the scope of work. The grantee must clearly define the services requested and the factors to be used in the evaluation and selection process.

Attachment 4-7:
Sample Request for Proposals

The competitive negotiation method is generally used to procure professional services in excess of \$20,000 for which the grantee will issue either an RFP or RFQ. Attachment 4-7 provides a sample Request for Proposals.

Step 3: Review Submissions

After the qualifications from the RFQ or proposals in response to the RFP have been received, the grantee should start the review process according to the established selection criteria. Attachment 4-6 provides a sample Professional Services Evaluation form for use by the grantee. The process should be thorough, uniform, and well documented. The review should be conducted by a committee composed of at least three people who have technical knowledge of the type of project being considered. However, these reviewers should have no potential conflicts of interest with any of the firms or individuals under review.

Evaluation criteria should include:

- ✓ Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- ✓ Past record of performance on contracts with the locality and other clients, including quality of work, timeliness and cost control.
- ✓ Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- ✓ Familiarity of the firm with the type of problems applicable to the project.
- ✓ An evaluation consideration to small, local, minority or female owned firms. These firms may be awarded extra points in order to promote the employment of these firms.

The relative importance of each of these factors should be determined beforehand by assigning values to each (e.g., experience may be assigned 30 points out of a possible 100 points).

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KRS 45A.455

Caution: Be aware of potential conflicts of interest. Some firms have the capacity to administer projects and design buildings or public facilities systems. It is considered a conflict of interest for the firm in charge of administration to also be in the position to oversee the engineering for a project. There can also be conflicts in the areas of rehab inspection, lead based paint testing, surveying, etc.

Step 4: Prepare a Contract

Once a firm is chosen and the basis of selection is documented along with the reasonability of cost, it is time to start the preparation of a contract with the successful individual or firm. See Chapter 5: Contracting for information on contract requirements.

Chapter 5: Contracting

Note: A project using Rural Development (RD) contracts must amend the contracts by addendum to ensure the contract includes all standard CDBG general and supplemental conditions.

Section 4-F. Procurement of Construction Services

This section describes certain key steps that are required to help ensure grantees comply with federal and state procurement requirements when procuring construction services:

Step 1: Establish a Contract Procurement File

The grantee should create and maintain a procurement file in order to document compliance with procurement requirements. At the end of the process, the procurement file must contain the following items:

- ✓ Copies of the IFB;
- ✓ Newspaper tear sheets advertising the IFB;
- ✓ A listing of firms contacted directly;
- ✓ Copies of all addenda;
- ✓ Evidence all bidders received notice of any addenda;
- ✓ Copies of all bids received;
- ✓ Bid tabulations and evaluation of bids; and
- ✓ Signed minutes of the bid opening.

Step 2: Bid the Contract

The bid package should be prepared with the correct wage decisions and labor requirements included. (See Chapter 6: Labor Standards and Construction Management) for information on preparing bid packages with labor requirements and wage decisions.) Bids must be solicited by public advertising, and must conform to the Omni Circular, State law, and local ordinance with respect to number of times advertised and scheduled. Attachment 4-9 provides a sample Advertisement for Bids.

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KRS 424.130

Attachment 4-9:
Sample Advertisement for Bids

All construction contracts in excess of \$20,000 must be advertised at least once, seven to 21 days before bids are opened. The advertisement must also call the bidder's attention to the requirement for prevailing wages as well as Section 3, equal opportunity, and other related requirements. In order to give maximum opportunity to small and minority firms, bid advertisements must also be sent to the MBE/WBE firms.

State law also requires that all construction contracts estimated by the grantee to exceed \$25,000 include bidder security. Bidder security protects against contractors bidding low and then, prior to contract execution, requesting a price adjustment due to "unforeseen" events. Acceptable forms of bidder security are "bid bonds" in an amount equal to five percent of the amount of the

KRS 45A.430

bid, or the equivalent in cash. Grantees also have discretion to require bid bonds on contracts under \$25,000 if the circumstances warrant such security.

Step 3: Issue Addenda

If the bid document is amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. However, addenda may be issued only up to 72 hours of bid opening. If an addendum is necessary within the 72-hour period before the scheduled bid opening, the bid opening date must be extended at least one week. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files. (Any applicable revision to the wage determination must also be distributed as an addendum.)

Step 4: Confirm Wage Rates

Nine days before bid opening, the grantee must contact DLG to determine if there have been any modifications or revisions to the Davis-Bacon wage rate decision. The grantee should document the “Nine-Day Call” with a memorandum to the Labor Standards File. This “Nine-Day Call” is important because, if modifications have been made before the scheduled bid opening, the grantee is liable for the difference between the original and any recently modified rates. If it is determined during the “nine day call” that there has been a modification, DLG will send the most recent modification to the grantee. The grantee will then send it as an addendum to all contractors who received the original bid package no later than 72 hours prior to bid opening.

Step 5: Open Bids

All bids received should be logged in with the time/date of receipt, name of bidder, and assigned a number. All bids received must remain sealed and in a safe place until the bid opening. At the date scheduled, the public bid opening should be conducted in a businesslike manner. Prior to opening bids, the grantee should state the engineer’s estimate on each contract to be awarded. The bids should be read aloud during the bid-opening meeting and the apparent low bidder should be determined during the bid opening.

- ✓ The bids must also be reviewed for both technical and legal responsiveness of bids.
- ✓ In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required.

Minutes of the opening must denote the apparent low bidder, include a bid tabulation, and be signed and placed in the contract file.

Step 6: Award the Contract

After review of the bids, the grantee must award the contract to the lowest responsible and responsive bidder if his/her bid is within the budgeted amount, preferably within 30 days of the opening. (A contract is awarded by official action of the local governing body.) More than 30 days may be required if the project is bond financed, financed with federal funds not available at the time bids are received, the Kentucky legislature must act before funds are available, or other extenuating circumstances exist. If the grantee expects to require more than 30 days to award, the advertisement and bid document should so state.

Caution: Contracts are to be *awarded within a 90-day period*. If contracts are not awarded within 90 days of bid opening, any wage rate modifications that occurred within that 90-day period will apply to the contract. If bids are held longer than 90 days, the grantee must make a “90-Day Call” to DLG to determine if any modifications have occurred.

If the contract is awarded to a bidder other than the low bidder, the grantee must prepare a written statement explaining why each lower bidder was deemed non-responsible or non-responsive.

- ✓ To be responsive, the bidder must have submitted all required documentation. However, the responsiveness criteria must be uniformly applied to all bidders. If one bidder is rejected for failing to submit a particular document, for example, all bidders failing to submit that documentation must be rejected.
- ✓ The grantee must check the contractor and all subcontractors’ names against the Federal Excluded Parties List System (EPLS) available at <https://www.sam.gov/portal/SAM/##11>. The grantee must document that the contractors and subcontractors are not on this list.
- ✓ The bidder may also be determined non-responsible if, in the grantee’s judgment and the judgment of the consulting professional, the bid is so unreasonably low that the project cannot be constructed for the amount bid. This is often a problem with inexperienced contractors. The grantee should always contact its attorney and its DLG Program Advisor if the grantee must award to other than the low bidder.

Step 7: Notify DLG and Execute the Contract

Once the bidder is accepted and the reasonability of cost is established, the grantee must send a Notice of Contract Award and Preconstruction Conference within 10 days to DLG and the Kentucky Department of Labor Regional Office of Federal Contract Compliance. Attachment 4-10 provides this notice and relevant contact information.

Following award of the contract, the contract documents and applicable bonding and insurance must be completed and executed. Contract documents include all the items contained in the bid package, bid proposal, executed contract, notice to proceed, contractor certifications, and bond and insurance forms. See Chapter 5: Contracting and Chapter 6: Labor Standards and Construction Management for information on contract and construction oversight requirements.

Attachment 4-10:
Notice of Contract Award and
Preconstruction Conference

Attachment 6-10:
Notice to Proceed

Chapter 5: Contracting and
Chapter 6: Labor Standards and
Construction Management