

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 24 CFR Part 85.36 (referred to as the “Common Rule”). (Nonprofit subrecipient organizations must adhere to the requirements of 24 CFR Part 84.) The goal in using these procurement procedures is to achieve maximum open and free competition.

24 CFR 85.36 (government agencies)
24 CFR 84.40 - .46 (nonprofits)

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 24 CFR Part 85.36(b). 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

24 CFR 85.36(b)

- ✓ 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); 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.

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 24 CFR Part 88.36(e) 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.

24 CFR 88.36(e)
Attachment 6-3: Goals for Minority
Participation in the Construction
Industry

Requirements

The grantee must send copies of bid advertisements to the Small Business Services Division, Cabinet for Economic Development before every contract is bid. At the very least, the grantee must also include MBE and WBE firms on solicitation lists and send them an Invitation to Bid. The Kentucky Procurement Assistance Program (KPAP) can assist grantees by providing them with a tailored list of MBE firms that have registered with the Kentucky Cabinet for Economic Development.

Kentucky Procurement Assistance
Program
Small Business Services Division
Cabinet for Economic
Development
2300 Capitol Plaza Tower
500 Mero Street
Frankfort, KY 40601
(800) 838-3266
ced.kpap@ky.gov

Suggested Outreach

- ✓ Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources.
- ✓ 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.
- ✓ Using the services and assistance of the Small Business Administration and the Small Business Services Division of the Cabinet for Economic Development and the KPAP business assistance program as required.
- ✓ 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.

It is the grantee's job to ensure that MBE/WBE firms are notified of any contracts ready for bid. The Small and Minority Business Division of the Kentucky Cabinet for Economic Development recommends that grantees visit the web site at www.thinkkentucky.com for aid in compiling solicitation lists. Grantees are also encouraged to provide KPAP with detailed information about their procurement opportunities so that KPAP can match the opportunity with Kentucky firms and alert those firms via e-mail.

Tip: More information on KPAP's bid match service is available at www.thinkkentucky.com/KYEDC/proassist.aspx. Grantees can also contact KPAP via e-mail at ced.kpap@ky.gov.

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

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

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.

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 4-2.

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.

Attachment 4-2:
Grantee Section 3 Action Plan

Finally, grantees are required to report on Section 3 annually. The report format is provided as Attachment 4-3 to this chapter and must be sent to DLG by September 15 each year of project implementation. Contact DLG for guidance on completing the report, if necessary.

Attachment 4-3:
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 Common Rule procurement standards cannot be violated to comply with Section 3.

Conflicts of Interest

Background

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 conflicts of interest. Conflict-of-interest issues deal with the relationship between the parties and financial gain. Those that could be judged to have conflicts include local officials, employees, consultants, family members, and business partners. Also see Chapter 1: Project Administration for information on conflict of interest.

Chapter 1: Project Administration

Requirements

24 CFR Part 85, Kentucky Revised Statutes and the CDBG regulations all contain conflict of interest provisions; therefore, 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 a potential conflict is known at the time of application, it should be brought to the attention of DLG staff.

KRS 45A.455

24 CFR 85.36(b)(3)

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 with CDBG funds 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

Chapter 6: Labor Standards and
Construction Management

- ✓ Competitive sealed bids are initiated by publishing an Invitation for Bids (IFB).
- ✓ 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.
 - Remember, the grantee must include MBE /WBE and Section 3 firms on solicitation lists and send them an Invitation for Bid.
- ✓ The IFB must also be publicized by distributing the IFB to a list of qualified contractors.
- ✓ The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- ✓ 24 CFR Part 85 (and Part 84) 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.
 - 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 applied, the bid documents must be clear as to what order those alternates will be applied.

KRS 424.120

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 are 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 4-4 to this Chapter.

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

The following requirements apply to the competitive negotiations procurement process:

- ✓ 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: 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 4-5 provides a sample Professional Services Evaluation. Attachment 4-6 provides a sample Review Panel Selection Summary.
 - There must be at least two proposals from qualified sources to permit reasonable competition.
- ✓ For both RFPs and RFQs, selection is made on the basis of

KRS 424.120

Attachment 4-5: Sample Professional Services Evaluation
Attachment 4-6: Sample Review Panel Selection Summary

the most responsible offer or price with consideration given to the factors identified in the Request for Proposal or Qualifications.

- 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 by DLG.

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

24 CFR 85.36(f) 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 are encouraged to 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 the bidders, the grantee shall revise the scope of work accordingly and issue an RFP open to all bidders, providing for expedited proposals. No advertisement is required, but the grantee shall allow **at least seven days** for bidders to submit proposals.
- (3) The RFP 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 explicitly state 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

By Contractors/Consultants

Professional grant administrators are often procured by grantees to undertake KCDBG projects. Note that any person performing grant administration must be a certified administrator. This certification status is achieved by attending the certification workshop conducted by DLG and passing an exam. (See Chapter 1: Project Administration for information on certified administrators.)

By Area Development Districts

Grantees often use the services of Kentucky's 15 Area Development Districts (ADD) to prepare a grant application and/or administer their KCDBG grants. While the grantee may not be required to procure these services through one of the methods described in this chapter, **the grantee must conduct a cost or price analysis used to judge the suitability and reasonableness of costs to be charged regarding the selection of the ADD.**

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. See also Chapter 5: Contracting for guidance on agreements with ADDs.

Chapter 5: Contracting

By Grantee Staff

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 solely on 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.

Caution: OMB Circular A-87 Section 32 stipulates that grantees cannot enter into contracts where payment to the contractor is contingent on the grantee's receipt of a KCDBG grant.

Federal procurement procedures do not apply if non-KCDBG funds are used to pay for these up-front professional services. 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 Common Rule. Therefore, most participating party procurements will not be monitored.

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 items 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 will 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.

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. The competitive negotiation method is generally used

Attachment 4-7: Sample Request
for Proposals

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 4-3 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).

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.

Chapter 1: Program Administration
KRS 45A.455

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.

Chapter 6: Labor Standards and Construction Management

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 for information on preparing bid packages with wage decisions.) Bids must be solicited by public advertising, and must conform to the Common Rule, State law, and local ordinance with respect to number of times advertised and scheduled. Attachment 4-8 provides a sample Advertisement for Bids.

KRS 424.130

Attachment 4-8: 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, a copy of the bid advertisement must also be sent to the Small Business Services Division of the Economic Development Cabinet.

Small Business Services Division
Kentucky Cabinet for Economic Development
Old Capitol Annex
300 West Broadway
Frankfort, KY 40601
cedbsd@ky.gov
Fax: (502) 564-9758

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 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.

KRS 45A.430

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 exactly one week. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files. (Any 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-responsive 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 in the Federal Excluded Parties List System (available at <https://www.sam.gov/portal/public/SAM>) to ensure that they have not been debarred or suspended from Federally-funded contracts. The grantee must document that the contractors and subcontractors are not on this list and place this documentation in the procurement file.
- ✓ 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: Execute the Contract

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 as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms. See Chapter 5: Contracting and Agreements for information on contract requirements.

Chapter 5: Contracting

Attachments

- ✓ Attachment 4-1: S&O Procurement
 - ✓ Attachment 4-2: Sample Grantee Section 3 Action Plan
 - ✓ Attachment 4-3: Section 3 Report: HUD Form 60002
 - ✓ Attachment 4-4: Sample Request for Qualifications (RFQ)
 - ✓ Attachment 4-5: Sample Professional Services Evaluation
 - ✓ Attachment 4-6: Sample Review Panel Selection Summary
 - ✓ Attachment 4-7: Sample Request for Proposals
 - ✓ Attachment 4-8: Sample Advertisement for Bids
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Attachment 4-1:
786; Procurement 7 cXY

KCDBG PROCUREMENT CODE

All procurements made by _____ (hereafter referred to as "Grantee/ Subrecipient") involving the expenditure of local, state and federal funds on CDBG Project _____ shall be made in accordance with the following procurement standards.

Procurement transactions, regardless of method or dollar value, will maximize open and free competition. The Grantee/Subrecipient shall not engage in procurement practices that may be considered restrictive in trade.

Purchases will be reviewed by the Treasurer to prevent duplication and to insure that costs are reasonable.

1. Methods for Procurement

Procurements shall be made by one of the following methods: (a) small purchase procedures, (b) competitive sealed bids, (c) competitive negotiation, (d) non-competitive negotiation.

A. SMALL PURCHASES

For purchases of less than \$50, efforts will be made to get the lowest and best price, but written records of such efforts are not necessary.

Purchases that cost more than \$50 but less than \$20,000 require quotations of rate, price, etc., but no legal advertisement is required. The **Grantee/Subrecipient** will solicit responses from at least three vendors. If written responses are not available, a statement explaining the procurement will be prepared and filed. If quotations are obtained via telephone, a memorandum will be prepared setting forth the date the calls were made, parties contacted, and prices obtained.

The **Grantee/Subrecipient** will make the award to the lowest responsive and responsible source, and enter into a contract formalizing the scope of work and terms of compensation.

B. COMPETITIVE SEALED BIDS

Bidding will be employed when detailed specifications for the goods or services to be procured can be prepared and the primary basis for award is cost. When the cost of a contract, lease or other agreement for materials, supplies, equipment or contractual services other than those personal or professional exceeds \$20,000, an Invitation for Bids (IFB) notice will generally be prepared. Per KRS 424.120, this notice will be published at least once in a qualifying official newspaper

of general circulation within the community. This newspaper notice will appear not less than seven (7) days and not more than twenty-one (21) days before the due date for bid proposals. In addition, the Grantee/Subrecipient must solicit sealed bids from responsible prospective suppliers by distributing a copy of such notice to them.

The IFB will include a general description of the goods or services to be procured, the bid deposit and bond performance required (if applicable), the location where bid forms and specifications may be secured, the time and place for opening bids, and whether the bid award will be made on the basis of the lowest bid price or the lowest evaluated price. If the lowest evaluated price is used, the measurable criteria to be utilized must be stated in the IFB. The newspaper notice must also contain language that calls to the attention of bidders all applicable requirements that must be complied with such as Section 3 of the 1968 Housing Act, Section 109 of the 1974 Housing and Community Development Act, the Civil Rights Act of 1964, Executive Order 11246 and the Davis-Bacon Act.

Sealed bids will be opened in public at the time and place stated in the IFBs. The Grantee/Subrecipient will tabulate the bids at the time of bid opening. The results of the tabulation and the bid documents will be evaluated by the review committee, which will make recommendations to the Grantee/Subrecipient. The Grantee/Subrecipient will make a firm fixed-price contract award in writing to the lowest responsive and responsible bidder. After the Grantee/Subrecipient makes the bid award, a contract will be prepared for execution by the successful bidder. After the contract is signed, all bid deposits will be returned to all unsuccessful bidders.

The Grantee/Subrecipient may cancel an Invitation for Bid or reject all bids if it is determined in writing that such is in the best interests of the Grantee/Subrecipient. The Grantee/Subrecipient may allow a vendor to withdraw a bid if requested at any time prior to the bid opening. Bids received after the time set for bid opening shall be returned to the vendor unopened.

Bid Overages:

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 the bidders, the grantee shall revise the scope of work accordingly and issue an RFP open to all bidders, providing for expedited proposals. No advertisement is required, but the grantee shall allow **at least seven days** for bidders to submit proposals.
3. The RFP shall be awarded on the basis of **lowest bid price**.

C. COMPETITIVE NEGOTIATION

The Grantee/Subrecipient may utilize competitive negotiations, regardless of contract amount, upon a written determination that:

1. Specifications cannot be made specific enough to permit the award of a bid on the basis of either the lowest bid price or the lowest evaluated bid price (in other words, bidding is not feasible).
2. The services to be procured are professional or personal in nature.

The use of the competitive negotiations procurement method for contracts other than architectural, engineering, planning or administrative services must be pre-authorized by DLG. With the exception of procurement of certain professional services (principally engineering services), competitive negotiations will proceed as follows:

1. Proposals will be solicited through a qualifying official newspaper advertisement; additionally, a Request for

Proposal (RFP) may be prepared and mailed to qualified vendors. The newspaper advertisement must be published at least seven (7) days and not more than twenty-one (21) days before the date for receipt of the proposals. The RFP will describe services needed and identify the factors to be considered in the evaluation of proposals and the relative weights assigned to each selection factor. The RFP will also state where further details regarding the RFP may be obtained. The RFP will call attention to the same regulations discussed in the bidding process. Requests for proposals will always include cost as a selection factor except for engineering services.

2. Award must be made to the offeror whose proposal is determined by the review committee to be most advantageous to the program, with price and other factors considered. Evaluations must be based on the factors set forth in the Request for Proposal and a written evaluation of each response prepared. The review committee may contact the firms regarding their proposals for the purpose of clarification and record in writing the nature of the clarification. If it is determined that no acceptable proposal has been submitted, all proposals may be rejected. New proposals may be solicited on the same or revised terms or the procurement may be abandoned.

For the procurement of architectural/engineering (A/E) professional services, an alternative to RFPs may be used. The Grantee/Subrecipient may publish a Request for Qualifications. RFQs are handled in a similar method to RFPs with the exception that cost is not a factor in the initial evaluation. A review committee will evaluate the responses and rank them by comparative qualifications. The highest scoring person or firm will be contacted and the selection committee will negotiate cost. If the committee is unable to negotiate a satisfactory cost arrangement, the second highest scoring person or firm will be invited to negotiate. The committee will maintain a written record of all such negotiations.

D. 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:

1. 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
2. The results of the competitive negotiations are inadequate; or
3. The product or service is available only from a single source.

Caution: The use of the non-competitive negotiations procurement method must be authorized by DLG.

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

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

II. CONTRACTS

Generally, all procurement in excess of \$500 will be memorialized and supported by a written contract. Where it is infeasible or impractical to prepare a contract, a written finding to this effect will be prepared and a purchase order regarding the transaction will also be prepared. The contractual provisions required by "The Common Rule" will be included in all contracts and purchase orders.

III. DOCUMENTATION

All source documents supporting any given transaction (receipts, purchase orders, invoices, RFP/RFQ data, and bid materials) will be retained and filed in an appropriate manner. Where feasible, source documents pertinent to each individual procurement shall be separately filed and maintained. Where it is infeasible to maintain individual procurement files, source documents will be filed and maintained in a reasonable manner (examples include chronologically, by vendor, by type of procurement, etc.). Whatever form of documentation and filing is employed, the purpose of this section is to insure that a clear and consistent audit trail is established. At a minimum, source document data must be sufficient to establish the basis for selection, basis for cost (including the issue of reasonableness of cost) and basis for payment.

IV. LOCALLY OWNED, MINORITY OWNED, FEMALE OWNED AND SMALL BUSINESSES

The Grantee/Subrecipient shall make and document efforts to solicit participation of locally owned, minority owned, female owned and small businesses. Where

feasible, evaluation criteria will include a factor with an appropriate weight for these firms. A list of locally owned, minority owned, female owned and small businesses and also minority businesses located within the trade region shall be maintained and utilized when issuing IFBs, RFPs and RFQs. The Grantee/Subrecipient shall also consult this list when making small purchases.

VI. SECTION 3

Grantee/Subrecipient shall abide by its Section 3 action plan and shall, to the maximum extent feasible, as required by 24 CFR Part 135, award contracts to businesses that provide economic opportunities for low and very low-income persons residing in the project area.

VII. CODE OF CONDUCT

A. CONFLICTS OF INTEREST

In addition to the prohibitions set forth in 24 CFR 570.489(h) and 24 CFR 85.36(b)(3), the following prohibitions shall apply:

It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard,

rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

B. PENALTIES

Any elected official, employee or designated agent of the **Grantee/Subrecipient** who knowingly and deliberately violates the provisions of this code will be open to civil suit without the legal protection of the **Grantee/Subrecipient**. Furthermore, such a violation of these procurement standards is grounds for dismissal by the **Grantee/Subrecipient**.

Any contractor or potential contractor who knowingly and deliberately violates the provisions of these procurement standards will be barred from future transactions with the Grantee/Subrecipient.

ADOPTED THIS ___ DAY OF _____, _____.

(Mayor/Judge Executive)

or

(Authorized Official of Subrecipient)

**Attachment 4-2:
Sample Grantee Section 3 Action Plan**

SAMPLE GRANTEE SECTION 3 ACTION PLAN*

The City of _____ agrees to implement the following specific affirmative action steps directed at increasing opportunities for training and employment for lower income residents of the project area, ** and increasing the utilization of business concerns within the Section 3 covered area or owned by Section 3 area residents.

- A. To identify projected work force needs for all phases of the program by occupation, trade, skill level, and number of positions and to develop utilization goals for the employment of lower income project area residents for each.
- B. To attempt to recruit from within the city the requisite number of project area residents through: local advertising media; posted signs; and community organizations and public and private institutions operating within or serving the project area.
- C. To identify eligible business concerns for CDBG-assisted contracts through: the Chamber of Commerce, the Urban League, local advertising median including public signage; project area committees, citizen advisory boards; lists available through CDBG program officials; regional planning agencies, and all other appropriate referral sources.
- D. To maintain a list of eligible business concerns for utilization in CDBG-funded procurements, to insure that all appropriate project area business concerns are notified of pending contractual opportunities, and to make available this list for general city procurement needs.
- E. ***To require all bidders on contracts to submit a written Section 3 Plan including utilization goals and the specific steps planned to accomplish these goals.
- F. *** To insure that contracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- G. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- H. To appoint or recruit an executive official of the city as Equal Opportunity Officer to coordinate the implementation of this Section 3 Plan.

* For CDBG grant awards greater than \$200,000.

** The project area is coextensive with jurisdiction _____'s boundaries.

*** Loans, grants, contracts, and subsidies which do not exceed \$100,000 will be exempt.

As officers and representatives of the City of _____, we the undersigned have read and fully agree to this Affirmative Action Plan, and become a party to the full implementation of this program.

Signature

Title

Date

Signature

Title

Date

**Attachment 4-3:
Section 3 Report: HUD Form 60002**

Part II: Contracts Awarded

1. Construction Contracts:

| | |
|---|----|
| A. Total dollar amount of all contracts awarded on the project | \$ |
| B. Total dollar amount of contracts awarded to Section 3 businesses | \$ |
| C. Percentage of the total dollar amount that was awarded to Section 3 businesses | % |
| D. Total number of Section 3 businesses receiving contracts | |

2. Non-Construction Contracts:

| | |
|---|----|
| A. Total dollar amount all non-construction contracts awarded on the project/activity | \$ |
| B. Total dollar amount of non-construction contracts awarded to Section 3 businesses | \$ |
| C. Percentage of the total dollar amount that was awarded to Section 3 businesses | % |
| D. Total number of Section 3 businesses receiving non-construction contracts | |

Part III: Summary

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002, **Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.**

Instructions: This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

- HUD Field Office: Enter the Field Office name .
1. Recipient: Enter the name and address of the recipient submitting this report.
 2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
 3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
 - 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
 6. Reporting Period: Indicate the time period (months and year) this report covers.
 7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

Part I: Employment and Training Opportunities

Column A: Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

Column B: (Mandatory Field) Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column C: (Mandatory Field) Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

Column D: Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

Column E: Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

Column F: (Mandatory Field) Enter the number of Section 3 residents that were trained in connection with this award.

Part II: Contract Opportunities

Block 1: Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Block 2: Non-Construction Contracts

Item A: Enter the total dollar amount of all contracts awarded on the project/program.

Item B: Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

Item C: Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

Item D: Enter the number of Section 3 businesses receiving awards.

Part III: Summary of Efforts – Self -explanatory

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

**Attachment 4-4:
Sample Request for Qualifications**

SAMPLE REQUEST FOR QUALIFICATIONS NOTICE

The city of West Linn, Kentucky, and/or its designated representative, (agency)_____, is seeking proposals for services relating to the _____Project. Qualifications will be taken for engineering services.

Minimum requirements include previous experience in engineering design and inspection on similar projects.

All interested persons and firms should contact (person) between the hours of 9:30 a.m. and 4:00 p.m., Monday through Friday, to obtain an informational packet. Qualifications must be received at the Office of the Mayor, (address) by (deadline date). The city of West Linn reserves the right to reject any and all Qualifications not meeting the requirements of this Request for Qualifications for Consulting Engineers.

Kentucky Relay Service for the hearing and speech impaired: 1-800-648-6056.

Attention is particularly called to the requirements as to conditions of employment to be observed under the contract, Section 3, Segregated Facility, Section 109, Title VI, and EO 11246. Local, minority and female-owned firms are encouraged to respond.

SAMPLE REQUEST FOR QUALIFICATIONS FROM CONSULTING ENGINEERS

The city of West Linn is applying for federal funding for the Westside Water and Sewer Project. Engineering services will include:

Engineering Design and Inspection

1. Design and prepare cost estimate for infrastructure improvements including:
 - Waterlines
 - Sanitary sewer
 - Curb and Gutter
 - Sidewalks
 - Street Construction
 - Storm Sewers
 - Sewage Lift Station
2. Construction drawings, specifications, plans, permits, etc. as well as bid procedures and recommendations of a construction contractor.
3. Construction inspection of the infrastructure improvements after contract award.

The engineer will be required to provide professional services, which will include: review of environmental assessment material, preparation of bidding and contract documents, and engineering inspection/reporting during actual construction.

Final plans, specifications and bid documents will be completed within (days) of Notice to Proceed. Procurement of said services shall be in accordance with "The Common Rule." All engineers interested in being considered for this project must submit a proposal detailing qualifications, technical expertise, management and staff capabilities, and related prior experience. The objective of the competitive process is to objectively select the firm that will provide the highest quality of service. Selected respondents will be interviewed and the firm(s) judged most qualified will be asked to prepare a final proposal which would include fees for said services.

Exhibit I, attached to this Request for Qualifications, is the minimum qualifications for the consulting engineer. These minimum qualifications have been established to assure the Community of professional expertise with adequate experience to assure successful completion of the proposed project within the allocated time constraints.

Exhibit II, attached hereto, is a rating system that will be utilized for selection of the consulting engineer. This rating system will be employed by the community in determining which proposal best meets the needs as outlined in this "Request for Qualifications".

All work to be undertaken as part of this proposed program must be undertaken in accordance with 24 CFR, Part 570; 24 CFR, Part 58; and other applicable State and Federal requirements.

Responses to this Request for Qualifications must be submitted to (person) prior to (deadline date) . Any response not meeting the minimum requirements for consulting engineer's prior experience as outlined in this request will be rejected.

Attention is particularly called to the requirements as to conditions of employment to be observed under the contract, Section 3, Segregated Facility, Section 109, Title VI, and EO 11246.

As stated previously, city of West Linn and (agency) reserves the right to reject any and all responses submitted. If you have any questions regarding this Request for Qualifications, please contact (person and phone number) .

EXHIBIT I
SAMPLE ENGINEER'S QUALIFICATIONS

I. Consulting Engineer's Minimum Qualifications

- A. The principal responsible for project coordination must have a minimum of three (3) years experience with the Kentucky CDBG Program or other federal/state programs.
- B. The engineering firm must have successfully provided engineering services for a minimum of three (3) similar type projects. The engineering firm will not be accepted if there have been any unresolved audit exceptions relative to engineering services.
- C. The engineering firm must submit references as to the firm's professional qualifications from a minimum of three (3) previous clients for which the engineering firm has performed work (include address and telephone number).

II. Format for Professional Qualifications

Technical qualifications for the consulting engineer shall as a minimum include the following:

- A. The criteria and design approach to be used in the performance of required work.
- B. The personnel to be assigned to the project and resumes of qualifications and experience.
- C. The engineer's experience in the development, design and construction of similar projects.

III. Final Selection

Final selection of the engineer will be based upon the maximum total points scored as set forth in the "Rating System" in Exhibit II.

The city of West Linn and (agency) reserves the right to negotiate a contract with the engineer deemed the most qualified to perform the professional services required.

Sealed proposals must be submitted to the Office of the Mayor, and received by (deadline date). Any proposal not meeting the qualifications set forth in this Request for Qualifications will be rejected.

EXHIBIT II
SAMPLE ENGINEERING SERVICES
SELECTION RATING SYSTEM

- | | |
|---|--------------------------|
| 1. <u>Project Engineer's Experience</u> | <u>Maximum 20 Points</u> |
| A. 5 or more years experience with CDBG or other federal/state programs | 20 Points |
| B. 3 or more years experience | 15 Points |
| C. 1-2 years experience | 10 Points |
| D. No experience | 0 Points |
| 2. <u>Firm's Project Completion Background</u> | <u>Maximum 20 Points</u> |
| A. Completion of 5 previous, similar type projects within proposed time frame & budget | 20 Points |
| B. Completion of 3 projects | 10 Points |
| C. No projects were completed | 0 Points |
| 3. <u>References from Similar Projects</u> | <u>Maximum 20 Points</u> |
| A. Respondent lists 3 previous clients with similar projects and all references give excellent response on quality of service | 20 Points |
| B. Respondent lists 2 previous clients | 15 Points |
| C. Respondent lists 1 previous client | 10 Points |
| D. Respondent lists no previous references | 0 Points |
| 4. <u>Firm's Familiarity with Community's Needs</u> | <u>Maximum 20 Points</u> |
| A. Firm is thoroughly familiar with City | 20 Points |
| B. Firm is somewhat familiar with City | 10 Points |
| C. Firm is unfamiliar with City | 0 Points |
| 5. <u>Minority or Female-Owned Firm</u> | <u>Maximum 5 Points</u> |
| A. Firm is minority or female-owned | 5 Points |
| B. Firm is not minority or female-owned | 0 Points |
| 6. <u>Small Business Firm</u> | <u>Maximum 5 Points</u> |
| A. Firm is a small business | 5 Points |
| B. Firm is not a small business | 0 Points |

MAXIMUM TOTAL POINTS

90 POINTS

Statement of Qualifications submittals should be organized to address each evaluation criteria as listed above and provide references where appropriate. Brochures and similar generalized background materials may be included, but are not required.

ENGINEER SELECTION

PROJECT _____

CITY/COUNTY OF _____

| CRITERIA | | POINTS AWARDED | | | |
|---------------------|---|----------------|--|--|--|
| 1. | Engineer's Experience | | | | |
| 2. | Firm's Project Completion Background | | | | |
| 3. | References from Similar Projects | | | | |
| 4. | Firm's Familiarity with Community's Needs | | | | |
| 5. | Minority or Female-Owned Firm | | | | |
| 6. | Small Business | | | | |
| TOTAL POINTS | | | | | |

Certification: I hereby certify that the city held interviews with the most qualified firms that responded based on the information available prior to the interviews. The selection committee evaluated and ranked all persons or firms interviewed based on the criteria set forth above.

Signed _____

Date _____

Title _____

**Attachment 4-5:
Sample Professional Services Evaluation**

SAMPLE PROFESSIONAL SERVICES EVALUATION

OWNER: _____
 (NAME)

PROJECT: _____
 (NUMBER) (NAME)

| EVALUATION CRITERIA (For additional criteria add sheets) | RANKING RANGE | FIRMS | | | | | |
|---|---------------|-------|---|---|---|---|---|
| | | A | B | C | D | E | F |
| a) Past Performance | | | | | | | |
| b) Ability of Professional Personnel | | | | | | | |
| c) Willingness to Meet Time and Budget Requirements | | | | | | | |
| d) Location | | | | | | | |
| e) Recent, Current, and Projected Work Load of the Firm | | | | | | | |
| f) Creativity and Insight Related to the Project | | | | | | | |
| g) Related Experience on Similar Projects | | | | | | | |
| TOTAL | | | | | | | |
| RANKING OF FIRMS (1,2,3...) (Transfer to Summary Form) | | | | | | | |
| NOTES: | FIRM NAMES: | | | | | | |
| | A - | | | | | | |
| | B - | | | | | | |
| | C - | | | | | | |
| | D - | | | | | | |
| | E - | | | | | | |
| | F - | | | | | | |

CERTIFICATION:

I hereby certify that the agency selection committee held interviews with all or at least five (5) persons or firms who responded and were deemed most qualified based on information available prior to interviews. The agency selection committee evaluated and ranked all persons or firms interviewed based on their (a) past performance; (b) the ability of professional personnel; (c) willingness to meet time and budget requirements; (d) location; (e) recent, current and projected work loads of the firms; (f) creativity and insight related to the project; and (g) related experience on similar projects; and no other criteria was used.

 (PRINT OR TYPE NAME)

 (DATE)

 (SIGNATURE)

**Attachment 4-6:
Sample Review Panel Selection Summary**

SAMPLE REVIEW PANEL SELECTION SUMMARY

OWNER: _____
 (NAME)

PROJECT: _____
 (NUMBER) (NAME)

| EVALUATION CRITERIA | RANKING RANGE | RANKING OF FIRMS (From the Evaluation Form) | | | | | |
|---|---------------|---|---|---|---|---|---|
| | | A | B | C | D | E | F |
| a) Past Performance | | | | | | | |
| b) Ability of Professional Personnel | | | | | | | |
| c) Willingness to Meet Time and Budget Requirements | | | | | | | |
| d) Location | | | | | | | |
| e) Recent, Current, and Projected Work Load of the Firm | | | | | | | |
| f) Creativity and Insight Related to the Project | | | | | | | |
| g) Related Experience on Similar Projects | | | | | | | |
| TOTAL | | | | | | | |
| RANKING OF FIRMS (1,2,3...) | | | | | | | |
| NOTES: | FIRM NAMES: | | | | | | |
| | A - | | | | | | |
| | B - | | | | | | |
| | C - | | | | | | |
| | D - | | | | | | |
| | E - | | | | | | |
| | F - | | | | | | |

CERTIFICATION:

I hereby certify that the agency selection committee held interviews with all or at least five (5) persons or firms who responded and were deemed most qualified based on information available prior to interviews. The agency selection committee evaluated and ranked all persons or firms interviewed based on their (a) past performance; (b) the ability of professional personnel; (c) willingness to meet time and budget requirements; (d) location; (e) recent, current and projected work loads of the firms; (f) creativity and insight related to the project; and (g) related experience on similar projects; and no other criteria was used.

 (PRINT OR TYPE NAME)

 (DATE)

 (SIGNATURE)

**Attachment 4-7:
Sample Request for Proposals**

SAMPLE REQUEST FOR PROPOSALS

Introduction

The City of _____ is accepting proposals from consultants for management and administrative services for a Community Development Block Grant from the State of Kentucky, under the 20_____ program.

Part One: Management and Administration

The level and scope of services to be provided under Part One will be determined by the city. A lump sum, fixed price fee will also be required for services subsequently included in an agreement under Part One. Examples of services which the consultant must be prepared and qualified to provide under Part One are as follows:

1. Assist the city in meeting equal opportunity, citizen participation, and fair housing requirements for participation in the CDBG program, including preparation of Section 3 Plan.
2. Prepare an environmental assessment of the program, including consideration of historic preservation concerns and assist the city in meeting all environmental clearance procedures required by the State.
3. Assist the city in meeting financial, administration and bookkeeping requirements of the program, including preparation of requests for payment.
4. Assist the city in meeting record keeping requirements of the program, including the establishment and maintenance of a filing system.
5. Assist the city in contract administration and monitoring requirements of the program, including enforcement of labor standards and conducting preconstruction conferences as required.
6. Prepare a final report as required by the State upon completion of the program.
7. Furnish the city with forms required for implementation of the project activities included in the application.
8. Furnish staff training to carry out project activities.
9. Prepare any reports required by the state to complete the program.
10. Assist the city in administering housing rehabilitation, property acquisition, and relocation activities if required in program.
11. Prepare an Employee Affirmative Action Plan for the city.

Part Two: Proposal

Proposals will be considered by the city at a meeting to be held at 7:30 p.m. on the 28th day of July, 20____. In order to be considered, proposals must be submitted to the city secretary prior to 3:00 p.m. on the 28th day of July, 20____. The city reserves the right to reject any or all proposals. All proposals should be sealed and marked on the outside, "CDBG ADMINISTRATION PROPOSAL."

Proposals will be evaluated and ranked on the basis of the following considerations:

| | |
|--|---------|
| Technical Approach/Understanding for problem | 40 |
| Work Management Plan | 10 |
| Experience of Proposed Personnel | 20 |
| Corporate Experience | 20 |
| Familiarity with Local Context | 15 |
| Cost | 20 |
| | <hr/> |
| | 125 pts |

Proposals will be reviewed by the Task Force and city Staff. No on-site interviews will be conducted. Telephone interviews may be conducted.

Questions concerning the RFP should be addressed to Mary Simmons at 111/445-7891.

Proposals will be evaluated on the basis of written materials. It is not necessary that the consultant attend the meeting at which proposals are considered. Only one copy of the proposal and required supplemental information is requested to be provided.

Proposals should be received at our offices by 3:00 p.m. on July 14, 20____.

Attention of bidders is particularly called to the requirements as to conditions of employment to be observed under the contract, Section 3, Segregated Facility, Section 109, Title VI and EO 11246.

Proposals should be addressed to:

- (Contact Name)
- (Title)
- (Address)
- (City), Kentucky (Zip)

"EQUAL HOUSING OPPORTUNITY"

**Attachment 4-8:
Sample Advertisement for Bids**

SAMPLE ADVERTISEMENT FOR BIDS

Project No. _____

(Owner)

Separate sealed bids for _____ for _____
will be received by _____ at the
office of _____
until _____ o'clock (A.M. – P.M., _____ S.T. _____ D.S.T.) _____, 20____, and
then at said office publicly opened and read aloud.

The information for Bidders, Form of Bid, Form of Contract, Plans, Specifications, and
Forms of Bid Bond, Performance and Payment Bond, and other contract documents
may be examined at the following:

Copies may be obtained at the office of _____ located at _____
_____, upon payment of \$ _____ for each set. Any
unsuccessful bidder, upon returning such set promptly and in good condition, will be
refunded his payment, and any non-bidder upon so returning such a set will be refunded
\$ _____.

The owner reserves the right to waive any informalities or to reject any or all bids.

Each bidder must deposit with his bid, security in the amount, form and subject to the
conditions provided in the Information for Bidders.

Attention of bidders is particularly called to the requirements as to conditions of
employment to be observed and minimum wage rates to be paid under the contract,
Section 3, Section 109 and E.O. 11246 and Title VI and other requirements. Minority
bidders are encouraged to bid.

No bidder may withdraw his bid within _____ days after the actual date of the opening
thereof.

(Date)

“EQUAL EMPLOYMENT OPPORTUNITY”