

CDBG-DR 4-1a
SUBRECIPIENT PROCUREMENT STANDARDS ACKNOWLEDGMENT

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

Full and Open Competition

Procurement transactions, regardless of method or dollar value, will maximize open and free competition. The Subrecipient shall not engage in procurement practices that may be considered restrictive in trade. To ensure a contractor does not receive unfair competitive advantage and in accordance with fair and open competition, contractors that develop or draft project specific specifications are excluded from being able to participate and bid for said proposal. According to CDBG Handbook Section 6-A (pg 6-1), specifications for labor and construction projects must clearly and accurately describe the technical requirements for materials and products and/or services to be provided. This traditionally should be prepared by an architect or engineer to ensure precise detail. CDBG-DR recipients will also be required to follow these requirements. When possible, State, local, or tribal geographical preferences should not be used in the evaluation of bids or proposals.

Prequalified List

The Subrecipient may establish a list of contractors based on experience, who meet qualifications and are verified on the HUD website; however, this list should not be utilized to exclude bidders who are not on the list at the time of submission. This process should still include proper outreach of minority and women owned businesses and meet all the procurement requirements discussed in the next section.

An example of this verbiage can be found in the KCDBG Handbook: Sample rehabilitation/reconstruction program Guidelines (See Appendix E). CDBG-DR recipients will also be required to follow these requirements.

Noncompetitive Procurement

Noncompetitive procurement is discussed in KCDBG Handbook: Section 4-C (see Appendix A). Additional information is provided in the next section.

Purchases will be reviewed by the Treasurer to prevent duplication and to ensure 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 \$30,000 require quotations of rate, price, etc., but no legal advertisement is required. The **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 **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 \$30,000, 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 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 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 Subrecipient. The Subrecipient will make a firm fixed-price contract award in writing to the lowest responsive and responsible bidder. After the 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 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 Subrecipient. The 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. **(Subrecipients 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 Subrecipient 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 Subrecipient 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 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.

For this type of procurement, the contracts must be either fixed-price or hourly with a Not-to-Exceed amount.

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 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 (an emergency must be declared 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 ensure 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 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 Subrecipient shall also consult this list when making small purchases.

VI. SECTION 3

Subrecipient shall abide by its Section 3 action plan and shall, to the maximum extent feasible, as required by 24 CFR Part 75, 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 **Subrecipient** who knowingly and deliberately violates the provisions of this code will be open to civil suit without the legal protection of the **Subrecipient**. Furthermore, such a violation of these procurement standards is grounds for dismissal by the **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 Subrecipient.

ADOPTED THIS ___ DAY OF _____, _____.

(Mayor/Judge Executive)

or

(Authorized Official of Subrecipient)