

4-1 Procurement Policy: Supplemental Policy for CDBG-DR funds

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Overview

The Commonwealth of Kentucky, Governor's Department for Local Government (DLG) is the responsible party at the state level for the management and administration of CDBG and CDBG-DR funds awarded by HUD.

DLG has opted to follow its own procurement policies and procedures as described in [Kentucky Revised Statutes \(KRS\) Chapter 45A](#) based on full and open competition with evaluation of cost or price of the product or service prior to contract execution. Additionally, if DLG chooses to provide funding to another state agency, the state agency will also follow Kentucky Revised Statutes (KRS) Chapter 45A. As the administering CDBG-DR agency, DLG follows the procurement requirements as described in the consolidated notice for 2021 CDBG-DR allocations 87 FR 31636 [Section III.A.1.a.(2)(a)(ii)].

DLG has established requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition with evaluation of cost or price of the product or service pursuant to 24 CFR 570.489(g) and the consolidated notice 87 FR 31636. DLG provides the KCDBG Handbook to assist grantees with legal, financial, and program obligations of CDBG funds as well as a step-by-step guide on how to administer the funds including tips, list, forms, and sample documentation. This guide is to be utilized in conjunction with applicable state and federal regulations and does not serve as a substitute for such. The most up-to-date version of this guide can be found on the DLG website. CDBG-DR recipients will follow the KCDBG Handbook as it relates to procurement. The appropriate sections of the Handbook as it relates to referenced policy can be found in Appendix A – E of this document. To supplement the procurement sections of the KCDBG Handbook, DLG also is providing this Procurement Policy for CDBG-DR funds. The purpose of this document is to provide additional details not described in the handbook that is specific to CDBG-DR funding and to show how the KCDBG Handbook will be utilized by CDBG-DR recipients as it relates to procurement.

Definitions

Bid bonds: A guarantee that consists of a firm commitment such as a bid bond, certified check, or other instrument for insurance that upon acceptance, the bidder will execute contractual documents within the time specified.

Community Development Block Grant (CDBG): The Federal entitlement program that provides funds to States and cities/counties for community development programs and projects.

KCDBG: Kentucky Community Development Block Grant.

KRS: Kentucky Revised Statutes

Grantees: Refers to eligible communities that receive and use CDBG funds under the Commonwealth of Kentucky's CDBG Program and recipients of CDBG-DR funding.

Minority Business Enterprise/Woman-owned Business Enterprise (MBE/WBE): Companies owned by minorities or women.

Performance Bonds: Bond executed to secure fulfillment of all the contractor's requirements under such contract

Payment Bonds: Bond executed in connection with a contract to assure payment for persons supplying labor and material in the execution of work provided for in the contract.

System for Award Management (SAM): An information system tool that streamlines the Federal acquisition business processes by acting as a single authoritative data source for vendor, contract award, and reporting information.

Procurement by States.

DLG follows the Kentucky Model Procurement Code (KRS Chapter 45A) regardless of funding source. KRS Chapter 45A promotes free and open competition and establishes procedures to ensure the cost or price of the product or service being procured is evaluated. DLG ensures compliance with 24 CFR 570.489(g) as described below:

***Procurement.** When procuring property or services to be paid for in whole or in part with [CDBG funds](#), the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by [§ 570.489\(h\)](#).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in [2 CFR 200.330](#).*

The following sections describe the procurement standards established by DLG for local governments and subrecipients for CDBG-DR funding.

Procurement standards (Replaces 2 CFR 200.318).

General

The guiding document for procurement for Grantees is the KCDBG Handbook. This handbook is based on the Kentucky Model Procurement Code (KRS Chapter 45A), which is the guiding procurement code for the state. According to the KCDBG Handbook: Section 4-A (see Appendix A), the KCDBG Handbook may vary from the Kentucky Model Procurement Code when the “Model Procurement Code conflicts with federal procurement standards and where DLG has stricter requirements.” The stricter interpretation is found in the KCDBG Handbook.

Additionally, the Procurement Policy Supplement, which is this document herein, is a supplement to this policy to be utilized specifically with CDBG-DR funds.

Contractor Oversight

To ensure a contractor performs in accordance with the terms, conditions, and specifications of their contracts or purchase order there are several policies and procedures in place that the grantee must follow. These policies and procedures are referenced in full in the KCDBG Handbook: Chapter 6 Introduction (See Appendix C).

The various sections with listed requirements include Pre-Bidding Requirements, Determining the Applicability of Labor Provisions, Bidding and Contracting Requirements, Pre-Construction Requirements, Payroll Review Requirements, Construction Management Requirements, Review

and Payments, and Documentation Requirements. CDBG-DR recipients will also be required to follow these requirements.

To ensure non-federal entities are maintaining proper oversight with CDBG-DR funds, DLG will provide ongoing technical assistance and training to the grantees and will also provide monitoring to ensure compliance with all requirements. This specific guidance is referenced in full in the KCDBG Handbook: Chapter 12 Section 12-B: (See Appendix D).

It is important to note that the Monitoring Process includes a comprehensive evaluation of all aspects of the program or project including the requirements listed in previous paragraphs.

Code of Conduct

All grantees must adopt and abide by the CDBG Procurement Code Section 4-A (see Appendix A), which includes 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 (outline in Chapter 1: Project Administration).” CDBG-DR recipients will also be required to follow these requirements.

Duplicative Purchases

To prevent duplication of purchases, all purchases utilizing CDBG-DR funds shall be reviewed by a Treasurer or an equivalent at the grantee’s organization. Additionally, following the various methods for procurement, which will be discussed in the Methods of Procurements Section of this document, will also assist in ensuring that duplicative purchases are prevented and to ensure that costs are reasonable.

Intergovernmental Agreements

The KCDBG Handbook discusses the allowability of the use of Public Agency Contracts and Intergovernmental agreements by local jurisdictions for various purposes in Chapter 5 Section 5-E (See Appendix B) as well as the different requirements in utilizing these types of contracts. CDBG-DR recipients will also be required to follow these requirements.

Awarding funds to a Responsible Source

Regardless of the method of procurement, the grantee has a responsibility to ensure that they are awarding funds to a responsible source. Part of the grantee’s responsibility includes verifying the contractor and all subcontractors’ names against the Federal Excluded Parties List System (EPLS) available at <https://sam.gov/search>. The grantee’s responsibility also includes making a reasonable judgement if a project seems to be bid at an unreasonably low price due to an inexperienced contractor. CDBG-DR recipients will also be required to follow these requirements.

See KCDBG Handbook: Section 4-C (see Appendix A) for additional information.

Maintaining the History of Procurement

Grantees are required to retain sufficient documentation regarding the history of procurement for each purchase. At the end of the procurement process the file must contain the following items as described in KCDBG Handbook: Section 4-E (see Appendix A):

- Written evidence that proposals/costs were determined to be reasonable
- 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 bases for selection

CDBG-DR recipients will also be required to follow these requirements. CDBG-DR grantees will be required to determine cost reasonableness prior to bidding.

Time and Materials Contracts/Cost Reimbursable Contracts

Time and material contracts should be avoided if possible. In limited instances, grantees may use these types of contracts.

Contractual and Administrative Issues

Regardless of the type of procurement, contractual or administrative issues are bound to arise. DLG discusses the various types of procurement issues in KCDBG Handbook: Section 4-D (pg 4-10- 4-12) and how a grantee should handle specific situations. CDBG-DR recipients will also be required to follow these requirements.

[Competition \(replaces 200.319\)](#)

Full and Open Competition

The goal of DLG is to ensure procurement is conducted in a manner consistent with full and open competition. To ensure this is accomplished, the state ensures that it is not placing unreasonable requirements on firms for them to qualify to do business with the Commonwealth of Kentucky and that it does not require unnecessary experience. For additional information, see KCDBG Handbook: Section 4-C (see Appendix A). CDBG-DR recipients will also be required to follow these requirements.

Eliminating Unfair Competitive Advantages for Contractors

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.

Written Procedures for Procurement Transactions

DLG provides the KCDBG Procurement Code in the KCDBG Handbook which documents the written procedures for procurement transactions. The Procurement Code describes the requirements when

soliciting bids for procurement as well as the various evaluation criteria to be utilized. See KCDBG Handbook: Section 4-E (see Appendix A) for additional information. CDBG-DR recipients will also be required to follow these requirements.

Prequalified List

The grantee 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.

Methods of procurement (replaces 200.320).

In accordance with KCDBG Handbook Section 4-C (see Appendix A), grantees must select from one of the following four methods of procurement depending on the type of product and/or service being procured: Small Purchase Procedures, Competitive Sealed Bids, Competitive Negotiations, and Non-Competitive Negotiations. CDBG-DR recipients will also be required to follow these requirements.

Small Purchase Procedures may be utilized when the grantee is making a purchase of \$50- \$30,000. For purchases of less than \$50, the grantee should get the best price possible, but documentation is not required. For purchases that fall within the \$50- \$3,000 threshold, the grantee should: obtain rate quotations from at least 3 sources, maintain documentation of the prices quoted, make the award to the lowest and most responsible source, and prepare and sign a contract formalizing the terms and conditions of the award.

Competitive Sealed Bids should be utilized when the goods or services being procured can be prepared in a clearly detailed specification and the principle for the award is cost. Typical projects using this type of procurement would be construction projects that costs more than \$30,000.

Competitive Negotiation should be utilized when the selection of the contract is based on something other than costs, such as experience and capacity. This type of procurement is typically utilized for services such as planning and administrative, engineering, and architectural. For this type of procurement, the contracts must be either fixed-price or hourly with a Not-to-Exceed amount.

Non-Competitive Negotiations is the final procurement method and is utilized through solicitation of a proposal from one source. This type of procurement may only be utilized when the other 3 methods of procurement are not feasible and one of the following circumstances apply: there is a public emergency, results of competitive negotiations are inadequate, or the product or service is only available from a single source.

Contracting with small and minority firms, women’s business enterprises and labor surplus area firms (replaces 200.321).

To ensure the opportunity to conduct business with Minority Business Enterprises (MBE) and Women Business Enterprises (WBE), DLG requires all grantees to notify MBE/WBE firms of bid opportunities. It is a requirement that each grantee has completed adequate outreach to ensure these groups have had adequate opportunity to participate. Additionally, The Kentucky Procurement Technical Assistance Center (PTAC) is available to post bid notifications or provide bid matching services with MBE/WBE firms. Additional information regarding MBE/WBE suggested outreach and resources for identifying MBE/WBE Contracts is in the KCDBG Handbook: Section B (pg 4-1- 4-2). CDBG-DR recipients will also be required to follow these requirements.

Domestic preferences for procurements (replaces 200.322).

As appropriate, grantees should provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

Procurement of recovered materials (replaces 200.323).

When appropriate, grantees should purchase goods, supplies, equipment, materials, and printing for which the minimum recycled material content as established by the Environmental Protection Agency is available. It is important to note that nothing prevents grantees from purchasing goods, supplies, equipment, materials, and printing for which a substitute is not available or when the requirements of the product cannot be met by recycled material content substitutes. This is pursuant to KRS 45A.510 & 45A.520

Contract cost and price (replaces 200.324)

DLG requires grantees to perform a cost or price analysis prior to the execution of a contract. The evaluation is to ensure that costs are reasonable. The evaluation should be placed in the procurement files.

Additionally, cost plus contracts are prohibited, which are defined as a contract at cost plus a percentage of cost system. See KCDBG Handbook: Section 4-D (pg 4-10) for additional information. CDBG-DR recipients will also be required to follow these requirements.

Federal awarding agency or pass-through entity review (replaces 200.325).

The grantee must make available, upon request, the following documents: pre-procurement review, procurement documents such as proposals or invitations for bids, or independent cost estimates. This can occur when:

1. Requested by DLG;
2. The grantee’s procurement procedures fail to comply with procurement standards;
3. The procurement is expected to exceed the small purchase threshold and will be awarded without competition or only one bid or offer is received;

4. The procurement, which is expected to exceed the small purchase threshold specifies a “brand name” product

If the grantee has other local procurement requirements that differ from those described in this policy or the KCDBG Handbook, the grantee can submit those policies for review and approval by DLG. If not submitted and approved, the Grantee must use the procurement procedures described in these documents.

Bonding requirements (replaces 200.326).

It is the responsibility of the grantee to ensure that grant funds are adequately safeguarded. This includes the use of bid bonds, performance bonds, and payment bonds.

In accordance with KCDBG Handbook: Section 4-F (pg 4-14) and Section 5-C (pg 5-3), if a construction contract is estimated by the grantee to exceed \$100,000, it must include the use of bid bonds, performance bonds, and payment bonds. Acceptable forms of bidder security include a bid guarantee equal to five percent of the bid price. Performance bonds must be for 100 percent of the contract price and a payment bond for 100 percent of the original contract price for all contracts over \$100,000. CDBG-DR recipients will also be required to follow these requirements.

If circumstances warrant it, grantees may also require bid bonds on contracts under \$100,000.

Bonding can be a complex topic, so grantees are encouraged to contact DLG or legal counsel if they need any additional guidance in this area.

Contract provisions (replaces 200.327).

The grantee’s contracts must contain the applicable provisions set out as described below:

1. Contracts that exceed \$100,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. If a contract exceeds \$10,000, it must address termination for cause and for convenience by the non-Federal entity.
3. An Equal Employment Opportunity clause as described under 41 CFR 60-1.4(b) must be included in all contracts that meet the definition of a “federally assisted construction contract”.
4. When construction contracts are awarded in excess of \$2,000, they must include a provision for compliance with the Davis-Bacon Act.
5. When a contract is awarded in excess of \$100,000 and includes the employment of mechanics or laborers, it must include a provision regarding Contract Work Hours and Safety Standards Act in accordance with 40 U.S.C. 3702.
6. If the Federal award meets the definition of “funding agreement” described in 37 CFR 401.2 (a) and the grantee wished to enter into a contract with a small business firm or non-profit organization, the grantee must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
7. When a contract is awarded in excess of \$150,000, a provision must be included regarding the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)).

8. A contract award must not be made to a party who is listed on the System for Award Management (SAM). Grantees must run a check on <https://sam.gov/> search prior to any purchase made with grant funds.
9. Contractors who bid awards exceeding \$100,000 must file the required certification in accordance with the Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)).
10. Contracts must not be procured, renewed, or obtained for telecommunications and video surveillance services or equipment with Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Additional Alternative Requirements for Contracts for Goods and Services

In accordance with 87 FR 31636, DLG, other state agencies, and grantee's contracts are required to clearly state the period of performance or date of completion in each contract. Contracts must also incorporate performance requirements. All contracts except those involving general management consulting services must also have liquidated damages included in each procured contract.

Appendix A

All sections from the KCDBG Handbook

Section 4-A. Procurement Code

All procurements funded in whole or in part with KCDBG funds must comply with the applicable federal requirements found in 2 CFR Part 200 (referred to as the Super or Omni Circular). The goal in using these procurement procedures is to achieve maximum open and free competition. Each grantee (and nonprofit subrecipient) shall adopt and abide by the KCDBG Procurement Code (Attachment 4-1), which shall apply only to procurements funded with KCDBG dollars, as authorized in 2 CFR 200.318. The KCDBG Procurement Code follows the Kentucky Model Procurement Code (KRS Chapter 45A), except where the Model Procurement Code conflicts with federal procurement standards and where DLG has stricter requirements. The KCDBG Procurement Code includes:

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

Section 4-C. Methods of Procurement

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

Small Purchase Procedures

For purchases of less than \$50, efforts must be made to get the lowest and best price. The grantee is not required to maintain written records for these purchases. Otherwise, small purchase procedures entail a relatively simple and informal process that can be used when goods and services, in the aggregate, cost no more than \$30,000. 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 \$30,000. (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:

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

Competitive Negotiation

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

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

Competitive negotiations are initiated by publishing a Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selections (generally only for engineering services). In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the grantee should provide or make available any materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions. A sample RFQ is provided as Attachment 4-5 and a sample RFP is provided as Attachment 4-6 to this Chapter.

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, which should be either fixed price or an hourly rate with a not to exceed figure.
 - An RFP should also:
 - Specify that cost and pricing data is required to support the proposed cost;
 - State anticipated start and completion dates; and
 - List evaluation criteria that will be used in ranking proposals.
- The RFP or RFQ must also be distributed to a list of qualified firms.
- All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing. Attachment 4-7 provides a sample Professional Services Evaluation. Attachment 4-8 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 the most responsible offer or price with consideration given to the factors identified in the RFQ or RFP.
 - For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.
- The grantee must maintain documentation of cost reasonableness for all services and reasons for selection.
- The grantee must prepare and sign a contract formalizing a scope of work and the terms of compensation.
- The grantee should promptly notify unsuccessful offerors.

Non-Competitive Negotiations

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

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

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

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

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

Section 4-E. Procurement of Professional Services

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

Step 1: Establish a Contract Procurement File

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

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

Step 2: Solicit Proposals

The first step in preparing a solicitation is determining the scope of work. The grantee must clearly define the services requested and the factors to be used in the evaluation and selection process. The competitive negotiation method is generally used to procure professional services in excess of \$30,000 for which the grantee will issue either an RFP or RFQ. Attachment 4-6 provides a sample Request for Proposals.

Step 3: Review Submissions

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

Evaluation criteria should include:

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

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

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

Step 4: Prepare a Contract

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

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.

Appendix B

All sections from the KCDBG Handbook

Section 5-E. Public Agency Contracts

Grantees are permitted under Title I to designate public agencies to assist in carrying out eligible activities on behalf of the grantee. Such designation is a non-procurement action by which the grantee may obtain services through non-competitive negotiations with another public agency (e.g., water/sewer or industrial authority that is a separate legal and financial entity from the grantee). (Note that this does not apply to administration by Area Development Districts.) See Chapter 4: Procurement for applicable procurement requirements.

Once the negotiations are complete, a contractual agreement must be executed. This agreement designates the scope of services, roles and responsibilities of each party, the time of performance and cost for such services. The contract must also contain the specific contract provisions found in the KCDBG Contracts Document Guide available on DLG's website.

A summary of the direct and indirect charges to be reimbursed under the contract, and the basis on which these charges are calculated, should be provided to the grantee with each payment request. Time sheets documenting staff time spent on the project should also be maintained.

Appendix C

All sections from the KCDBG Handbook

Chapter 6: Labor Standards and Construction Management

Introduction

Construction projects funded with KCDBG require that certain procedures be followed in order to comply fully with applicable federal and state requirements. For example, federal and state labor standards require recipients and contractors to meet and document compliance with certain rules associated with the employment of workers on construction projects. This chapter describes the policies and procedures that must be followed when undertaking construction projects with KCDBG funds, including bid preparation, compliance with labor standards, pre-construction meetings and inspection and approval procedures.

Appendix D

All sections from the KCDBG Handbook

Section 12-B. Technical Assistance and Monitoring

Overview

It is the goal of DLG to assist and support recipients in complying with applicable state and federal requirements and in implementing their project activities in a timely manner. There are two corollary ways that DLG accomplishes this. First, DLG provides ongoing technical assistance (TA) and training. This occurs in a variety of methods:

- DLG staff fielding and answering questions;
- Meetings and site visits with local staff and officials to discuss potential projects and program requirements;
- Application documents and workshops;
- Posting of this handbook and other resources on the DLG website; and
- Regular training sessions for both new and experienced grant administrators.

Monitoring is the other primary mechanism to ensure compliance occurs. As such, it is important that grantees have a clear and common understanding of the monitoring process and procedures. This section provides information on the scope and frequency of monitoring, and roles of the monitoring staff, and the key steps involved in the monitoring process. Grantees may also request assistance from DLG at any time.

Title I outlines the review responsibilities of the state. DLG is required by Title I of the Housing and Community Development Act of 1974, as amended, and 24 CFR Part 570.492 of the State CDBG Regulations to monitor its KCDBG grantees. The review responsibility requires that the state ensure three key areas are in compliance:

- Approved activities are carried out in a timely manner;
- Activities and certifications are conducted in accordance with the requirements and the primary objectives of Title I and with other applicable laws; and
- Grantees show a continuing capacity to carry out approved activities in a timely manner.

The Monitoring Process

The monitoring review may be a comprehensive evaluation of all aspects of the program or project for all aspects of compliance or it may be oriented toward assessing compliance in a specific area or areas. The reviews may be conducted at DLG's offices or on-site. The depth and location of the monitoring will depend upon which compliance areas need to be reviewed. Note, however, that a full scope monitoring of all compliance areas should be conducted at least once for each funded activity. Exhibit 1, on page 12-6, illustrates the process in a flow chart.

Monitoring also provides an opportunity for grantees and/or grants administrators to seek technical assistance in areas of concern or confusion.

Scheduling the Visit

A visit is scheduled in advance. The Chief Executive Officer (CEO) of the grantee, as well as the grant administrator, is notified of the date, time, location and purpose of the review visit in writing.

Entrance Meeting/Interview

Once on-site, the first thing that typically occurs is an entrance meeting/interview. DLG staff will conduct an entrance meeting/interview to state the purpose of the review and outline which files and documentation will be needed during the review. Grantees should be prepared to provide an overview of the project as well as its status and any issues prior to the beginning of the reviews. The DLG staff will

also ask about particular concerns or needs regarding the project so that technical assistance can be scheduled, if appropriate.

Monitoring of Files and Other Documentation

Utilizing appropriate checklists, the DLG staff will review the files to determine if all requirements have been met. The primary areas being examined are consistency with the specific terms of the grant agreement and compliance with state and federal requirements. Record keeping is the most important component of monitoring.

- Grantee files pertaining to the CDBG project must be orderly and complete.
- In addition, if files are maintained by or located in another office such as an engineer or clerk, these files should be obtained and available for review.

If there are areas that are discovered during the review that indicate noncompliance with the laws, regulations or other requirements, this may result in a finding. A finding of non-compliance must be remedied. A finding can result in a sanction if corrective action is not taken in a specified manner and/or timeframe. For each finding, DLG must indicate a corrective action, either to correct a past problem or to avoid a future problem, which must be taken by the grantee. A deficiency in program performance not based on a statutory, regulatory, or other program requirement is a concern. Corrective actions are not required for concerns, but DLG may recommend actions to address concerns. Findings with corrective actions must be outlined in the Monitoring Review Letter. Concerns may also be included. Monitoring letters are discussed further below.

Tip: Most of the previous chapters include a brief section on monitoring and record keeping as it relates to each topic. Refer to those sections for details on what to expect from monitoring and which files to have on hand for the review.

Exit Meeting/Interview

At the conclusion of the review, DLG staff may conduct an exit interview with the grantee, if requested or appropriate. The meeting typically includes local officials and the grants administrator and provides a tentative summary of the results of the review. If problems are apparent, including any findings or concerns, the grantee has an opportunity to provide more information or clarification.

The DLG reviewer will also indicate the timeframe in which a monitoring letter will be sent, the process for requiring the grantee to address any findings, and the consequences for not addressing compliance issues in a timely manner.

Finally, the DLG reviewer will discuss any further technical assistance that is requested or needed. It may be needed to make arrangements for such technical assistance to be provided at a later date.

Review Letter and Follow-Up Actions

The grantee will receive a formal review letter giving the results of the review. This letter will generally be within 30 days of the conclusion of the monitoring review; however, a longer time frame may be appropriate based on workload and the complexity of the issues at hand. The letter will:

- Summarize the area(s) reviewed and performance expectations,
- Provide a summary and an analysis of what was discovered during the review, and

- List all findings and recommended corrective actions to resolve the findings and the timeframe in which the corrective actions must be carried out.

The review letter may also include one or more recommendations. These are matters that, if not properly addressed, can become a finding and can ultimately result in sanctions. Recommendations are often used to point out operational or management problems, or patterns of performance that could lead to larger problems later, even if they are not evident at the time of the review. Recommendations may require some form of response on the part of the grantee.

The grantee must respond in writing within 30 days to any findings and recommendations listed in the compliance review letter.

- The grantee will describe all corrective actions taken or provide new information not reviewed during the visit. The corrective actions must be consistent with the recommendations made by DLG in the monitoring letter.
- The grantee's Chief Executive Officer must certify that all regulations will be observed in future transactions and provide written assurance that no adverse effects occurred to the project for failure to observe said regulations.

If issues are not resolved, DLG may, as outlined in the CDBG regulations, impose a progressive level of sanctions that include:

- Additional reporting,
- Suspension of funding,
- Additional special conditions,
- Return of disallowed expenditures,
- Termination of the grant, and/or
- Legal action.

DLG will inform the grantee if the response is sufficient to clear the findings. DLG will provide any assistance necessary during the review or after any findings or concerns are made to ensure that the project is completed according to the grant agreement and all state and federal rules and regulations. No project will be closed if there are outstanding findings, including audit issues.

Grantee Monitoring of Subrecipients

Grantees are responsible and liable for full compliance with all applicable laws, regulations and requirements that come with KCDBG funds. Therefore, when grantees pass on/through KCDBG funds to another entity to carry out a program, the grantee must ensure the subrecipient is carrying out that program in full compliance. The Office of Management and Budget (OMB) guidance issued December 26, 2013 regarding 2 CFR Part 200 (Omni Circular) emphasized the responsibility to manage and monitor subrecipients and to take action when performance and compliance issues arise. The information provided previously in this chapter regarding DLG monitoring and oversight of grantees can also be applied by a grantee at the subrecipient level. Additional guidance is available as indicated in the text box to the right. Grantees should inform DLG of any issues that arise and work collectively towards timely and appropriate resolution.

Appendix E

All sections from the KCDBG Handbook

SAMPLE REHABILITATION/RECONSTRUCTION PROGRAM GUIDELINES

DECLINE STREET REDEVELOPMENT PROJECT DEFINITIONS

Definitions of terms used in this document shall be the following:

Ability-to-Pay - The difference between 30% of a household's adjusted average monthly gross income and the average monthly housing cost, used to determine how much of the cost of rehabilitation the household can be expected to pay with its own resources.

Agency – The city or county implementing the program as an agent of Governor's Office for Local Development, a grantee of the U.S. Department of Housing and Urban Development.

Annual Income - The gross amount of household income anticipated to be received during the 12 months following the effective date of examination as calculated by the current HUD Section 8 method.

Applicant - The "Applicant" shall include all persons having legal or equitable title to the structure for which rehabilitation assistance is requested, including nonresident owners.

Applicant's Family (Household) - The "Applicant's Family" shall include the applicant and other persons related by blood, marriage, or operation of law in addition to all non-related persons living in the dwelling unit.

Approving Officer - A representative of the Agency authorized to approve rehabilitation contractors and distribution of rehabilitation funds.

Critical Health and Safety Deficiencies - Those necessary elements of the structure which are lacking or are deteriorated to a point which poses a real threat to the continued well being of the occupants. For the purpose of this plan, these include wiring, heating and major structural problems and the lack of adequate plumbing and sanitary septic systems.

Forgivable Deferred Loan (FDL) - A direct payment for the purpose of bringing an eligible property up to Housing Code paid to the approved contractor on the Applicant's behalf. There is no requirement for repayment unless the property is sold or transferred within the first Insert Number years after rehabilitation is complete and/or the unit does not continue to be occupied by a low and moderate-income household. The amount of the FDL is forgiven/reduced at a rate of Insert Percent per year for Insert Number years.

Fixed Medical Expenses - Monthly recurring costs related to health care, not covered by medical insurance, as verified by a doctor and/or pharmacy.

Housing Code/Housing Standard - The International Code Council (ICC) Property Maintenance Code which is adopted by the Agency as the minimum standards to which all structures approved for rehabilitation assistance must comply.

Land Sales Contract - Any transaction, regardless of the arrangement, in which the purchaser-occupant obtains fee title, but only if a series of installment payments over a period of time have been completed. (It must be a “recorded land contract in order to prove ownership.)

Low and Moderate-Income - Level of income, when combined with family size, relates to eligibility for rehabilitation with a Forgivable Deferred Loan (FDL). These income levels have been established by the federal Department of Housing and Urban Development (HUD) and adopted by the Agency.

Monthly Housing Cost - Those expenses to the occupant incurred monthly for housing. This amount reflects property tax, mortgage or rent, basic utilities excluding phone (electricity, gas, water, sewer) and property insurance.

Owner-Occupied Structure - A residential structure occupied by the owner which is used entirely for residential purposes.

Rehabilitation - Repairs, reconstruction or additions to a structure necessary to improve it to the minimum standards as required by the Housing Code and/or HUD guidelines.

Rehabilitation Assistance - That amount of money available from the Agency to an Applicant on behalf of a specific structure for the purpose of correcting critical health and safety deficiencies in that structure and bringing the unit into full compliance with the Housing Code. For the purpose of this rehabilitation plan, the type of rehabilitation assistance offered is in the form of a Forgivable Deferred Loan (FDL).

Structure - For the purpose of this rehabilitation plan, a structure containing one to four residential units is considered to be real property.

FINANCING MECHANISMS – FORGIVABLE DEFERRED LOANS

A Forgivable Deferred Loan is one form of financial assistance provided to applicants who qualify for the CDBG program. The amount of those loans will vary from case to case. Further, the amount is directly related to the household income. Forgivable Deferred Loans will be available to property owners located within the targeted rehabilitation area and shall only be made for the rehabilitation of those dwelling units deemed substandard yet feasible for rehabilitation by the initial inspection.

The applicant must be considered low and moderate-income as determined by HUD Section 8 Income Limits. In no instance will the Forgivable Deferred Loan exceed the total cost of the rehabilitation expenses.

Every Forgivable Deferred Loan will be secured by a Mortgage and Promissory Note containing a *Insert Number of Years* reducing clause. At the end of the *Insert Number* year, the balance of the principal remaining (*Insert Percentage of the original amount of the Forgivable Deferred Loan*) will be satisfied and forgiven in full.

The schedule for Forgivable Deferred Loans will be as follows: (*Change according to number of years*)

At End of Time Period	Percentage of Loan Forgiven
1st Year	20%
2nd Year	40%

3rd Year	60%
4th Year	80%
5th Year	100%

The term of the Forgivable Deferred Loan begins with the date of the Certificate of Final Inspection and runs for Insert Number years. Reductions of the principal amount of the Forgivable Deferred Loans are subject to ownership and, in the case of owner-occupants, residency. Owner-occupants must own and occupy the property during the entire Insert Number years in order to qualify for the full reduction of the principal amount of the Forgivable Deferred Loan (this provision will not apply if the owner-occupant must temporarily or permanently enter a nursing home or similar care facility). Failure on the part of the owner-occupant to maintain ownership and residency during the Insert Number years will stop the reduction and require the repayment of the unreduced balance of the loan. For owner-occupants, the full amount of the FDL may be forgiven upon the death of the owner(s). Reductions for the investor-owners are subject to ownership. The owner-occupant must retain ownership and maintenance of the property during the entire Insert Number year reduction period in order to qualify for reductions.

ELIGIBILITY REQUIREMENTS

APPLICANTS ELIGIBLE FOR REHABILITATION ASSISTANCE

The following requirements shall determine the eligibility of persons applying for a Rehabilitation Forgivable Deferred Loan. It should be explicitly understood that no one (or combination) of these criteria qualifies or disqualifies an Applicant. Rather, these guidelines give the Agency and the Approving Officer the opportunity to evaluate each Applicant on various specific points prior to making a decision of eligibility. The items to be analyzed as a part of the eligibility criteria are as follows:

RESIDENCE

Eligible Applicants shall reside within the designated project area, or the structure upon which rehabilitation is to be performed must be within the designated project area.

OWNERSHIP

Eligible Applicants shall be owners of the structure upon which rehabilitation is to be performed. Owners shall hold title or deed to the structure or shall be buying the structure under a recorded Land Sales Contract.

MAINTENANCE

Each Applicant will be required to maintain the rehabilitated structure for the Insert Number year term of the financial assistance. Maintenance will be examined in relation to the rehabilitation work performed, as per the work write-up and applicable minimum property standards. An officer of the Agency will perform periodic inspections, inform the property owner of any items that have deteriorated and request correction. The Agency reserves the right to take any appropriate action necessary to ensure that the rehabilitated property is maintained and may include early payback of financial assistance. This action will only be taken if the applicant shows a total disregard for maintenance and the Agency's request for correction of deteriorated items is repeatedly ignored and is

documented accordingly. The initial review will be in letter form and will take place approximately six to nine months after the date of the final inspection in order to detect any problems the owner may face during the contractor's one-year guarantee period and/or basic maintenance problems.

FINANCIAL ELIGIBILITY

Priority for rehabilitation assistance shall be given to Applicants whose adjusted annual incomes are below the HUD Section 8 definition of low and moderate income. This amount is based upon family size and currently includes the following income categories: **NOTE: Family Size is based on the number of persons living in the household. Maximum Gross Income is based on gross annual income for all household members over 18 years of age.**

FAMILY SIZE	50% of Median Very-Low Income Maximum Gross Income	80% of Median Low-Moderate Income Maximum Gross Income
1 Person	\$14,600	\$23,350
2 Persons	\$16,700	\$26,700
3 Persons	\$18,750	\$30,000
4 Persons	\$20,850	\$33,350
5 Persons	\$22,500	\$36,050
6 Persons	\$24,200	\$38,700
7 Persons	\$25,850	\$41,350
8 Persons	\$27,500	\$44,050

The Housing and Community Development Act of 1974, as amended, specifically stipulates that priority be given to low and moderate-income families, elderly persons, femaleheaded households, and the disabled. In order to comply with the requirements of the state and federal legislation, the Agency shall give priority to those applications meeting these guidelines.

The income of an Applicant includes the income of the Applicant and the Applicant’s Family. If ownership of the property rests in more than one person, the Applicant is each owner and family. The Applicant's income, therefore, is the sum of the family income of all Applicants. The exception to these conditions follows:

If an applicant is part-owner of the property to be rehabilitated and other co-owner(s) are not contributing to the maintenance of the property, income shall be considered to be only that of the occupant, when all co-owners agree not to sell the property for a period of at least Insert Number years and the other co-owners agree to allow the applicant to remain in the unit without increasing the applicant's housing costs.

INELIGIBLE APPLICANTS

Ineligible Applicants shall be any Applicant not meeting all of the criteria above.

STRUCTURES ELIGIBLE FOR REHABILITATION

The following requirements shall determine the eligibility of a structure for rehabilitation assistance. Structures eligible for rehabilitation are identified in the CDBG application.

ELIGIBILITY OF RESIDENT APPLICANT

An eligible structure shall be owned and/or occupied by an eligible Applicant as defined above.

LOCATION

An eligible structure shall be located within the boundaries of the *Insert Name of Housing Project.*

MINIMUM STANDARDS

An eligible structure shall be one which is below the minimum requirements established by the Housing Code and which, at a minimum, will have critical health and safety problems corrected following rehabilitation assistance.

MULTI-UNIT STRUCTURES

An eligible structure shall contain no more than four (4) units, one (1) of which must be occupied by the owner/applicant. ELIGIBLE REPAIRS An eligible structure shall exhibit one or more of the deficiencies defined in Eligible Costs.

INELIGIBLE STRUCTURES

Certain structures shall not be eligible for rehabilitation assistance due to excessive deficiencies.

EXCESSIVE REHABILITATION NEEDS

For any structure determined by the Agency to require rehabilitation costs in excess of 75% of the value of the property, the Agency may deny approval of funds to rehabilitate the structure. The Agency may approve funds for demolition of vacant properties with excessive rehabilitation needs. Occupied structures with excessive rehabilitation needs may, at the Agency's discretion, be acquired by the Agency and the occupants relocated.

DANGEROUS OR UNFIT STRUCTURES

By definition of the Housing Code, any structure determined by the Rehabilitation Inspection to be a dangerous or unfit structure shall not be eligible for rehabilitation assistance, unless rehabilitation financed with the rehabilitation funds and/or other funds shall result in the structure meeting the requirements of the Housing Code.

ELIGIBLE REHABILITATION COSTS

A rehabilitation Insert Number Forgivable Deferred Loan may be made only to cover the cost of rehabilitation necessary to make a low-income, owner-occupied one-to-four dwelling, mixed-use or tenant-occupied property conform to public standards for safe, decent and sanitary housing as required by the Housing Code and as identified in the work write-up and meeting the definition of "eligible costs" as provided in this section. As a result of the rehabilitation work financed, in whole or in part, by a rehabilitation deferred-payment loan, the property must, at a minimum, conform to the Housing Code.

Rehabilitation funds shall be used to achieve economical and practical compliance with the Housing Code.

ELIGIBLE COSTS

Costs eligible for rehabilitation assistance are the costs of meeting the requirements of the Housing Code and correcting incipient violations, lead based paint testing and abatement, and providing off-street parking. Building permits may be included in the amount of rehabilitation assistance. Other costs deemed necessary to ensure rehabilitation may be approved, on a case-by-case basis, by the Agency Board to be included as part of the Applicant's FDL.

A. Requirement of the Housing Code. When necessary to meet a specific requirement of the Housing Code, a rehabilitation Forgivable Deferred Loan may be used to the extent necessary for:

- ◆ Rehabilitation, or removal and replacement of elements, of the dwelling structure, including basic equipment. The term "basic equipment" includes such items as heating furnace, hot water tank, electrical, sanitary fixtures and kitchen stove and refrigerator if deficient or damaged. It does not include other appliances.
- ◆ Provision of sanitary or other facilities, including the provision, expansion and finishing of space necessary to accommodate those fixtures.
- ◆ Provision of additional or enlarged bedrooms.
- ◆ Provision of off-street parking in compliance with local zoning requirements.
- ◆ Provision of utility service, including water and sewer

B. Incipient Violations. In order that a property may be brought up to and maintained at the Housing Code, rehabilitation assistance may be used for rehabilitation work necessary to correct incipient as well as existing violations of the Housing Code. An incipient violation exists if, at the time of inspection, it is thought that the physical conditions of an element in the structure will deteriorate into an actual violation during the term of the five-year FDL. The property inspection report should identify the incipient violations to establish the basis for providing for corrective work with the rehabilitation assistance. For enforcement purposes, it may be necessary for actual violations to be identified and listed separately from incipient violations. However, the amount of the rehabilitation Forgivable Deferred Loan to be made may cover both actual and incipient violations.

C. Requirements Not Covered by Housing Code. Any rehabilitation, not specifically required by the Housing Code, found necessary for safety, health and general welfare of the occupants of any structure or general maintenance of the structure shall be determined by the Rehabilitation Inspector to be eligible. Homes constructed prior to 1978, will be tested for lead-based paint and addressed in accordance with new HUD lead based paint regulations.

INELIGIBLE COSTS

Certain rehabilitation costs shall not be eligible for rehabilitation deferred payment loans including:

- A. Rehabilitation not required to bring the structure up to the standards of the Housing Code unless otherwise stated above;
- B. Landscaping and other yard or "nonstructure" property improvements except fences.
- C. Additional rooms, except as required to meet the Housing Code.
- D. Rehabilitation of accessory structures, unless specifically authorized by the Agency for health and safety reasons.
- E. Rehabilitation judged to be damaging to the historical character or value of a structure by the State Historic Preservation Officer of the Kentucky Heritage Commission.