

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 subrecipients to complete CDBG-DR projects include certified professional grant administrators, engineers, architects, and construction contractors.

Section 4-A. CDBG-DR Procurement Code

All procurements funded in whole or in part with CDBG-DR funds must comply the CDBG-DR procurement policy as found in the appendix to this chapter. The CDBG-DR procurement policy complies with the requirements of 24 CFR 570.489 (g) that allow states to establish procurement requirements based on full and open competition. DLG has modeled these CDBG-DR procurement requirements on 2 CFR Part 200 (referred to as the Super or Omni Circular).

[Attachment 4-1:
Procurement Policy](#)

Each subrecipient shall adopt and abide by the CDBG-DR Procurement Code (Attachment 4-2), which shall apply only to procurements funded with CDBG-DR dollars. The CDBG-DR 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 CDBG-DR Procurement Code includes:

- ✓ A code of conduct to govern the performance of the subrecipient's officers, employees or agents in contracting with CDBG-DR 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.

[Chapter 1: Program Administration](#)

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 CDBG-DR procurement policy requires subrecipients 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 subrecipients are expected to make special efforts to award contracts to MBE and WBE firms. Goals for minority participation in construction (by county) are provided in Chapter 6 as Attachment 6-3.

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

Requirements

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

Attachment 4-2:
PTAC Bid Match Form

Suggested Outreach

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

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

Resources for Identifying MWE/WBE Contacts

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

Section 3**Background**

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD investments, to the greatest extent feasible, are directed to low- and very low-income persons and to business concerns which provide economic opportunities to low- and very low-income persons. The goal is to keep dollars local and help foster local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 focuses on opportunities for jobs, training, and business ownership opportunities, via contracts. Opportunities such as these can help to lift individuals out of poverty and encourage self-sufficiency.

Section 3 of Housing and Urban
Development Act of 1968
24 CFR Part 75

The new Final Rule 24 CFR Part 75 became effective on November 20, 2020. The obligations to meet the Section 3 rule can be challenging; the key is to have a plan for efforts to meet the rule requirements and to maintain good documentation to demonstrate compliance.

Section 3 Key Points

- ✓ Section 3 applies to recipients of \$200,000 or more in CDBG-DR 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).
- ✓ Section 3 applies to the entire project even when the CDBG-DR funds are only a portion of the total funding

- ✓ Compliance can be met in two ways:
 - Quantitative goals:
 - **25%** or more of all labor hours must be worked by Section 3 workers
 - **5%** or more of all labor hours must be worked by Targeted Section 3 workers

OR

- Qualitative Goals
 - If a subrecipient has not met the quantitative goals, they can still be considered to in compliance if they can provide evidence of a number of qualitative efforts to assist low and very low-income persons with employment and training opportunities
 - CDBG Section 3 Guide provides a list of qualitative efforts CDBG-DR subrecipients may undertake to document the project made qualitative efforts to assist low and very low-income persons with employment and training opportunities

Defining Section 3 Workers

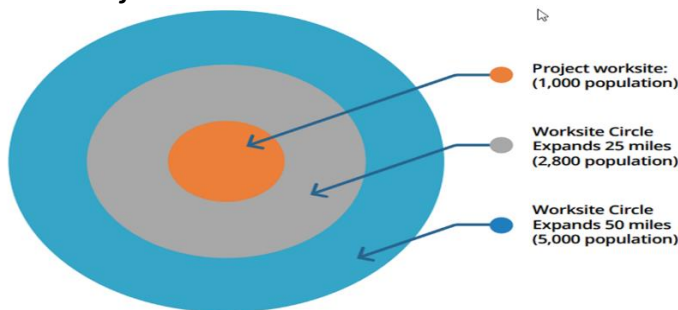
A Section 3 worker is any worked who currently fits, or when hired within the past five years fit, at least one of the following categories as documents:

- ✓ A low or very low-income worker
- ✓ Employed by a Section 3 business concern
- ✓ A Youthbuild participant

Defining Targeted Section 3 Worker

- ✓ Employed by a Section 3 business concern
- ✓ Currently fits or when hired fit at least one of the following categories as documented within the past five years:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5 **and** qualifies as a low or very low-income worker
 - A YouthBuild participant

Service Area as Defined in 24 CFR 75.5



- ✓ Service Area = an area within one mile of the Section 3 project

OR

- ✓ If > 5,000 people live within one mile of Section 3 project, then, Service Area = an area within a circle centered around the Section 3 project site that encompasses 5,000 people.

To ensure subrecipients have an adequate plan to satisfy the Section 3 requirements, a subrecipient must develop and implement a Section 3 Action Plan that outlines how it will achieve these goals. The plan must state the subrecipient’s commitment to Section 3 and outline steps to implement it. The DLG Section 3 Guide Attachment 4-3 provide a step-by-step plan to implement the Section 3 requirements and establish the needed files to document compliance. CDBG-DR subrecipients will need to maintain records of Section 3 compliance and will report their Section 3 efforts and accomplishments at the closeout of their grant utilizing the CDBG-DR Project Completion Report Attachment 13-2a.

Requirements

Contractors or subcontractors for housing construction, demolition, rehabilitation or other public construction triggering Section 3 are required to comply with the Section 3 regulations. Refer to the Section 3 Guide available on DLG’s website along with Chapter 5 and the Contracts Document Guide 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.

Note: In cases where a subrecipient receives CDBG-DR assistance of over \$200,000 for a program but no individual project or activity exceeds the \$200,000 threshold, the Section 3 requirements do not apply.

Reporting Requirements

It is important to document efforts made to comply with Section 3. For the qualitative efforts, each project that triggers the Section 3 requirements will be required to report the total labor hours for the project, labor hours completed by Section 3 qualified workers, and labor hours for Targeted Section 3 workers. Documentation of the quantitative efforts 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 4-3:
Grantee Section 3 Action Plan

Finally, subrecipients are required to report on both quantitative outcomes and qualitative efforts at the completion of the project on the CDBG-DR Project Completion Report 13-2a. Contact DLG for guidance on completing the report, if necessary.

Attachment 13-2a:
Project Completion Report

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

Conflicts of Interest

Background

The procurement process must be fair to all those seeking to do business with a subrecipient. Nothing is more detrimental to a successful procurement operation than to have the relationship between the subrecipient 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. Essentially, those that are in positions of trust, such as local officials, employees, consultants, family members, and business partners, cannot personally gain from procurement transactions. Furthermore, subrecipients should not overlook the fact that this rule applies to both actual conflicts of interest and “apparent” conflicts. Too often, staff members mistakenly believe that indirect or noncash benefits would not be considered a conflict of interest. However, vendor or contractor donations to employee fund-raising drives, event tickets, meals, or gifts of any kind could potentially be considered conflicts of interest. For more information on conflicts of interest, see Chapter 1: Project Administration.

Chapter 1: Project Administration

Requirements

Subrecipients should be thoroughly familiar with the conflict-of-interest requirements in 2 CFR Part 200, Kentucky Revised Statutes and the CDBG regulations. These same requirements shall apply to all projects funded by CDBG-DR program. Any possible conflict of interest issues must be brought to the attention of DLG immediately. The sooner a real or apparent conflict of interest is identified the better. If any potential conflict is known at the time of application, it must be brought to the attention of DLG staff.

Separation of Duties

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

Open Competition

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

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

- ✓ Requiring unnecessary experience.

Section 4-C. Methods of Procurement

Subrecipients 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 subrecipient 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 subrecipient 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 CDBG-DR-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:

KRS 45A.365

Chapter 6: Labor Standards and
Construction Management

- ✓ 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 (7) days or more than twenty-one (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 subrecipient 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 for the bidder to properly respond.

KRS 424.120

Attachment 4-4:
Advertisement for Bids

- ✓ 2 CFR Part 200 requires a bid guarantee from each bidder equal to five percent (5%) 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 term 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. The contract must also have a not to exceed clause. .

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.

Attachment 4-5:
Sample Request for Qualifications
(RFQ)

Attachment 4-6:
Request for Proposal (RFP)

The following requirements apply to the competitive negotiations procurement process:

KRS 424.120

- ✓ The RFP or RFQ must be advertised in the newspaper of largest circulation in the jurisdiction at least one time for not less than seven days or more than 21 days before the date set for the opening of proposals.
 - The subrecipient 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 subrecipient must maintain documentation of cost reasonableness for all services and reasons for selection.
- ✓ The subrecipient must prepare and sign a contract formalizing a scope of work and the terms of compensation.
- ✓ The subrecipient should promptly notify unsuccessful offerors.

Attachment 4-7:
Sample Professional Services
Evaluation
Attachment 4-8:
Sample Review Panel Selection
Summary

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 subrecipient must declare an emergency as authorized by law); or
- ✓ The results of the competitive negotiations are inadequate; or
- ✓ The product or service is available only from a single source.

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

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

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

Section 4-D. Other Procurement Issues

Bid Overages

Overview

2 CFR 200.318 requires subrecipients 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. Subrecipients shall carefully conduct and review their cost estimates and to utilize safeguards such as deductible alternates in order to minimize the risk of overages that will require a re-bid. Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. This section governs the process for dealing with such a situation.

Options

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

1. Obtaining additional funds from another source and continuing with the original IFB.
2. Rejecting all bids, revising project scope and bid specifications, and issuing a revised IFB (competitive sealed bid) open to the entire public; or
3. Conducting competitive negotiations with **all** bidders. (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 all bidders, the grantee shall revise the scope of work accordingly and issue an IFB open to all bidders, providing for expedited proposals. No advertisement is required, but the subrecipient shall allow **at least seven (7) days** for all bidders to submit proposals.
3. The IFB shall be awarded on the basis of **lowest bid price**.

Deductible Alternates

Subrecipients **shall use** deductible alternates unless doing so is not practical or not feasible. When deductible alternates are requested, the bid document issued by the subrecipient 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 subrecipient 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 subrecipient would then check to see if any of the adjusted bids are within budget. If so, the subrecipient can award the bid to the bidder with the lowest adjusted bid. If not, the subrecipient 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 subrecipient's IFB or the information for the bidder's packet explicitly states the method of award, including use of any deductible alternates. Failure to be clear and precise on the procedures that will be utilized can cause confusion or disputes among bidders that could, at the very least, cause project delays. DLG recommends that the subrecipient's attorney be consulted in these cases.

Grant Administration Services

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

[Chapter 1: Program Administration](#)

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

[Chapter 5: Contracting](#)

A subrecipient 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 CDBG-DR project. It is important to note that time sheets must demonstrate that only time associated with the CDBG project is charged to the CDBG 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 subrecipient often will contract with consulting and engineering firms to perform specific planning and design functions prior to a project being funded. Federal procurement procedures do not apply if non-CDBG-DR funds are used to pay for these up-front professional services. All services to be provided must be procured in accordance with 2 CFR 200 and the CDBG-DR Procurement Code. The subrecipient 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 2 CFR Part 200. Therefore, most participating party procurements will not be monitored.

However, cost reasonableness, as required by 2 CFR Part 200, does apply to the subrecipient and its expenditures. In the absence of procurement, the subrecipient will be required to evaluate costs to determine if they are reasonable. Private sector entities may be required to provide some comparative cost information to assist the subrecipient in this evaluation process and the subrecipient should maintain this documentation in its files.

Sales Tax on CDBG Projects

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

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

If, despite these concerns, a subrecipient still desires to purchase equipment, materials or supplies for a CDBG-DR project, they may do so *only* if the subrecipient procures all of those materials according to the CDBG-DR 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. Subrecipients that purchase equipment, materials or supplies must provide proof that the purchases were competitively procured by the subrecipient. Failure to provide such documentation may result in the purchases being deemed ineligible for reimbursement with CDBG funds and/or may require repayment of improperly withheld sales tax.

Section 4-E. Procurement of Professional Services

This section describes steps that are required to help ensure subrecipients comply with federal and state procurement requirements in the procurement of professional services. The subrecipient 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 CDBG-DR Procurement Code.

Step 1: Establish a Contract Procurement File

The subrecipient 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 subrecipient 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 subrecipient will issue either an RFP or RFQ. Attachment 4-6 provides a sample Request for Proposals.

Attachment 4-6:
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 subrecipient 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 subrecipient. 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).

Chapter 1: Program Administration
KRS 45A.455

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

Step 4: Prepare a Contract

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

Chapter 5: Contracting

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

Section 4-F. Procurement of Construction Services

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

Step 1: Establish a Contract Procurement File

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

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

Step 2: Bid the Contract

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

Chapter 6: Labor Standards and
Construction Management
KRS 424.130

Attachment 4-4:
Sample Advertisement for Bids

All construction contracts in excess of \$30,000 must be advertised at least once, seven (7) to twenty-one (21) days before bids are opened. The advertisement must also call the bidder's attention to the requirement for prevailing wages as well as Section 3, equal opportunity, and other related requirements. In order to give maximum opportunity to small and minority firms, bid advertisements must also be sent to the MBE/WBE firms.

State law also requires that all construction contracts estimated by the grantee to exceed \$100,000 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 (5%) of the amount of the bid, or the equivalent in cash. Subrecipients also have discretion to require bid bonds on contracts under \$100,000 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 seventy-two (72) hours of bid opening. If an addendum is necessary within the seventy-two (72)-hour period before the scheduled bid opening, the bid opening date must be extended at least one (1) week. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files. (Any applicable revision to the wage determination must also be distributed as an addendum.)

Step 4: Confirm Wage Rates

Nine (9) days before bid opening, the subrecipient must contact DLG to determine if there have been any modifications or revisions to the Davis-Bacon wage rate decision. The subrecipient 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 subrecipient 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 subrecipient, The subrecipient will then send it as an addendum to all contractors who received the original bid package no later than seventy-two (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 subrecipient 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 subrecipient 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 subrecipient 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 subrecipient 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 subrecipient must prepare a written statement explaining why each lower bidder was deemed non-responsible or non-responsive.

- ✓ To be responsive, the bidder must have submitted all required documentation. However, the responsiveness criteria must be uniformly applied to all bidders. If one bidder is rejected for failing to submit a particular document, for example, all bidders failing to submit that documentation must be rejected.
- ✓ The subrecipient must check the contractor and all subcontractors’ names against the Exclusions List available at <https://sam.gov/content/exclusions>. The grantee must document that the contractors and subcontractors are not on this list.
- ✓ The bidder may also be determined non-responsible if, in the subrecipient’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 subrecipient should always contact its attorney and its DLG Program Advisor if the subrecipient must award to other than the low bidder.

Step 7: Notify DLG and Execute the Contract

Once the bidder is accepted and the reasonability of cost is established, the subrecipient must send a Notice of Contract Award and Preconstruction Conference within ten (10) days to DLG and the Kentucky Department of Labor Regional Office of Federal Contract Compliance. Attachment 4-9 provides this notice and relevant contact information.

Attachment 4-9:
Notice of Contract Award and
Preconstruction Conference

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

Attachment 6-10:
Notice to Proceed

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