

Chapter 5

Professional Services





Chapter Five: Professional Services

Table of Contents

	Page
Supporting Materials	5-1
Procurement Procedures	5-1
Price and Cost Analysis	5-6

Introduction

Chapter 5: Professional Services provides guidance to Grantees of the Community Development Block Grant (CDBG) program regarding statutory and regulatory requirements for the procurement of professional services. Professional services may include architects, engineers, accountants, appraisers, attorneys, land surveyors, right-of-way specialists, etc.

Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent procurement policy.

Supporting Materials

Attachment 5-1	Terms and Conditions for Contracts for All Professional Services
Attachment 5-2	Request for Proposals for Professional Services
Attachment 5-3	Request for Quotations for Professional Services

Procurement Procedures

All procurement transactions must be conducted in a manner that provides full and open competition. **Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent of all applicable procurement policies.** Procurement procedures should avoid any provisions that would restrict or eliminate competition. Some of the situations considered to be restrictive of competition include:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices between firms or affiliated companies;
4. Noncompetitive awards to consultants that are on retainer contracts;
5. Organizational conflicts of interest;
6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and
7. Any arbitrary action in the procurement process.

Direct Solicitation Recommendation

Maximum competition is required. Grantees are encouraged to maximize competition by increasing the number of solicited firms. Using direct solicitation in combination with all types of procurement could assist the Grantee if sole source approval is requested. Locating firms or individuals can be accomplished in a number of ways, including the following:

- Contacting individuals or firms that have provided services for similar types of projects; and
- Referencing sources, such as telephone directories and other business listings.

Methods of Procurement

Of the five methods of procurement for professional services, Grantees should select the most appropriate method based upon the need and nature of the services required. **Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent procurement policy.**

The West Virginia Division of Purchasing handbook is available at the following link: www.state.wv.us/admin/purchase/handbook/2007R26/hand3.htm. Following is a summary of the five basic selection alternatives and the requirements associated with each:

a. Small Purchase Procurement Procedures

This is a relatively simple and informal method of procurement used for professional services.

The WVDO has delegated purchasing authority to Grantees for procurements estimated to cost less than \$25,000 based upon the West Virginia Purchasing Division's small purchase limits, (www.state.wv.us/admin/purchase/Handbook/2007/hand3.htm) or less than the Grantee's small purchase dollar limit.

The award will be made to the lowest responsive and responsible bidder.

- Goods, materials and professional services that are expected to cost **\$2,500 or less** require no bids; however, competition is always encouraged.
- For purchases of **\$2,500.01 to \$5,000**, three verbal bids are required. Grantees must document all verbal bids in writing and place documentation in the project files. (**Attachment 5-1**)
- For purchases **\$5,000.01 to \$25,000**, three written bids are required. Grantees must place copies of all written bids in the project file to document those firms or individuals solicited and their responses. Faxed bids are acceptable and should be confirmed with an original copy within two working days. Please refer to **Attachments 5-2 and 5-3** for sample forms for written bids.

Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent procurement policy. For example, if the local small purchase dollar limit is \$15,000, the state small purchase dollar limit is \$25,000, and the federal small purchase limit is \$100,000, the Grantee must follow the most stringent policy - a \$15,000 small purchase dollar limit, which is the local policy.

For all service purchases in excess of \$25,000, the Grantee must follow procurement procedures that may include Competitive Sealed Bids, Request for Proposals and Request for Quotations.

b. Procurement by Competitive Sealed Bids

Bids are publicly solicited by a Class II legal advertisement (**Attachment 5-2**), and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms to all the terms and conditions of the invitation for bids and is the lowest

price. The advertisement must contain all HUD-related requirements, in particular, Section 3, and state it is a CDBG-Small Cities project.

c. Procurement by Request for Proposals: Architects/Engineers - WV Code 5G

Procurement of architectural/engineering services, as well as incidental services that members of those professions and those in their employment may logically or justifiably perform, must be consistent with the West Virginia State Code, Chapter 5G (www.legis.state.wv.us/WVCODE/Code.cfm?chap=05g&art=1) and with federal procurement standards contained in 24 Code of Federal Regulations (CFR) Part 85.35 and 36. This procurement method must be utilized for the procurement of architectural/engineering services. Please refer to the West Virginia Qualifications Based Selection Council brochure at www.wvqbs.org/docs/qbs_manual.pdf for specific samples for selection of an engineer or architect.

Total Project Costs Estimated at \$250,000 or More – Architects/Engineers

The procurement shall meet the requirements set forth in WV Code 5G-1-3. The Grantee must announce by public notice published as a Class II legal advertisement.

Total Project Costs Estimated Less Than \$250,000 – Architects/Engineers

The procurement of services shall meet the requirements set forth in WV Code 5G-1-4 and the WVDO will consider a Class I legal advertisement, which is published one time, and other documentation as evidence of seeking acceptable competition. In accordance with Chapter 5G, Article 1, Section 4, the local "Director of Purchasing" shall obtain prior approval from the WVDO to select a firm on the basis of "previous satisfactory performance and knowledge of the agency's facilities and needs." The WVDO can only approve such a request if it is in accordance with the criteria established in 25 CFR Part 55, 36b(4) Procurement by Non-Competitive Proposals, which are addressed in the Procurement by Non-Competitive Proposals/Sole Source Procurement section of this chapter.

Request for Proposals Evaluation Criteria – Architects/Engineers

The review process for proposals received in response to an RFP should be thorough, uniform, well documented and in accordance with WV Code Chapter 5G. This review should be conducted by a selection committee, which, to the greatest extent possible, includes persons with subject matter expertise.

Reviewers should have no conflicts of interest with the firms or individuals under review. Documentation should be on file to reflect the review and evaluation process of the selection committee and actions taken in the selection process. All proposals must be evaluated utilizing the same selection criteria. In addition to the criteria set forth in WV Code Chapter 5G for architectural and engineering services, evaluation criteria commonly used in the selection process include, but are not limited to:

- 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 Grantee and other clients, including quality work, timeliness and cost control;

- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned work load of the firm; and
- Familiarity of the firm with the type of problems applicable to the project.

Request for Proposals Negotiation of Fees – Architects/Engineers

WV Code Chapter 5G prohibits the use of price as evaluation criteria and it is to be negotiated after the selection of the architect/engineer. Due to this requirement, a price analysis or a cost analysis must be performed prior to the execution of the contract. Details on these procedures are discussed in this chapter under the Price Analysis and/or Cost Analysis section.

In addition, please note that "cost plus a percentage of cost" and "percentage of actual construction cost" contracts are not acceptable and must not be used. All contracts must be lump sum with a "not-to-exceed" clause.

For additional information on procuring a project engineer, please see "How to Select an Engineering or Architectural Company for Your Project Handbook" published by the West Virginia Qualifications Based Selection Council at: www.wvqbs.org/docs/qbs_manual.pdf. Please note that this publication references a Request for Qualifications which for CDBG purposes is the same as a Request for Proposal.

Request for Proposal – All Other Professional Services

A Request for Proposal (RFP) (**Attachment 5-2**) is a written announcement that invites vendors to compete for the provision of services. This procurement method is used to acquire professional services where the scope of work may not be well defined and cost is not the sole factor in determining the award. All criteria by which the bidders will be evaluated must be contained within the bid document. When using a RFP the following requirements apply:

1. The Grantee must announce by public notice published as a Class II legal advertisement.
2. The RFP should specify that the project is being undertaken with CDBG funds and that federal and state regulations governing the CDBG program are applicable.
3. Proposals must be received from two or more qualified sources to permit reasonable competition consistent with state and federal regulations.
4. The RFP must identify all significant evaluation factors and their relative importance.
5. All proposals received must be evaluated. The Grantee must have a formal process for the technical evaluation of proposals and determination of the responsible vendor. The selection method must be documented. This process must be stated in the advertisement.

6. The award must be made to the vendor whose proposal would be most advantageous to the recipient with consideration of the factors identified in the RFP.
7. Unsuccessful vendors should be notified promptly in writing and documentation of notification retained in the project files.

Procurement by Request for Quotation

A Request for Quotation (RFQ) (**Attachment 5-3**) is a written announcement that invites vendors to compete for the provision of services. This procurement method is used to acquire professional services where the scope of work is specific and conformity to specifications and price are the only factors used in the evaluation process. When using an RFQ, the following requirements apply:

1. The Grantee must announce by public notice published as a Class II legal advertisement. Proposals must be received from two or more qualified sources to permit reasonable competition consistent with state and federal regulations.
2. The RFQ must identify all technical qualification requirements and that price is a factor in the selection process.
3. All quotations received must be evaluated. The Grantee must have a formal process for technical evaluation of quotations.
4. Determination of responsible vendors and the selection method must be documented. This process must be disclosed in the advertisement.
5. The award may be made to the firm or individual whose proposal meets the minimum qualifications at the lowest price.
6. Unsuccessful vendors should be notified promptly in writing and documentation of notification retained in the project files.

Applicability: This method of procurement can only be used for non-engineering/architect procurements.

Noncompetitive Proposals/Sole Source Procurement

Noncompetitive negotiation is procurement through the solicitation of a proposal from only one source or, after solicitation of a number of sources; competition is determined to be inadequate.

Procurement by noncompetitive proposals may be used only when the award of a contract is unfeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

1. The item or service required is only available from a single source.
2. A public emergency exists such that the urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods.

3. After solicitation from a number of sources, competition is determined to be inadequate and the WVDO authorized the noncompetitive method. In all cases, noncompetitive negotiation which will involve CDBG funds must have prior approval from the WVDO.

A price or cost analysis must be provided and include the projections of the data and the evaluation of the specific elements of costs and profits.

Price and Cost Analysis

Price analysis is a review and evaluation of a proposed price without evaluating separate cost elements. Price analysis is to be used in all cases where a cost analysis is not performed. In most cases where three or more responses to a solicitation are received, only a price analysis is performed.

Cost analysis is a review and evaluation of the separate elements of cost that make up the proposal. Cost analysis requires that the cost principles of OMB Circulars A-87 and/or A-122 be used to determine the allowability and reasonableness of costs. A cost analysis is required when only one response to solicitations is received. Cost analysis also requires that profit be negotiated as a separate element of the price. In negotiating profit, the following is to be considered:

1. The complexity for the work to be performed.
2. The risk born by the contractor.
3. The contractor's investment.
4. The amount of subcontracting.
5. The quality of the contractor's record of past performance.
6. The industry profit rates in the surrounding geographical areas for similar work.

For more information on cost and price analysis, please see the "Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients" at:

www.hud.gov/offices/cpo/grantees/cstprice.pdf

Professional Services by Individuals Employed by the Grantee

These employees may be employed in two separate ways. The first method is for those professional individuals who are hired on a full-time basis to work for the Grantee. These employees meet the IRS definition of an employee. Procurement procedures do not apply to employees of the Grantee who are acting in their official capacity and are eligible to be reimbursed to the extent that:

- They are reasonable for the services provided;
- They follow an appointment made in accordance with state and local laws; and

- The amount of compensation charged to the grant will be based on payrolls, documented and provided in accordance with generally accepted practices of state and local governments.

The second method is employees that are hired through a competitive process to work for the Grantee on a contract basis. The advertisement must clearly state that the employee will work on CDBG project(s) in addition to normal duties. Types of employees may include attorneys, accountants and other non-engineering professional employees.

Debarment Review - Verification of Eligibility

When a successful vendor has been selected, and prior to the award of a contract, the Grantee must conduct a debarment review to ensure that the vendor is not on the federal or state list of debarred or ineligible firms or individuals.

1. The Federal Debarment review may be conducted at: www.sam.gov. The verification must be placed in the project file.
2. The State Debarment review may be conducted at: www.state.wv.us/admin/purchase/Debar.html. The verification must be placed in the project file.

Executing a Professional Service Contract

The Grantee then must prepare a contract with the successful firm or individual. The contract must include all of the following provisions:

General Administrative Provisions

- Effective date of contract
- Names and addresses of city and firm or individual
- Names of representatives of Grantee and firm or individual who will act as liaison for administration of the contract
- Citation of the authority of the Grantee under which the contract is entered into and source of funds
- Conditions and terms under which the contract may be terminated by either party and remedies for violation/breach of contract

Scope of Services

- Detailed description of extent and character of the work to be performed.
- Time for performance and completion of contract services, including project milestones, if any
- Specification of materials or other services to be provided by both parties, i.e., maps, reports, printing

Compensation Method

- Provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract
- All contracts must be written as lump sum not-to-exceed contracts

Federal Standards Provisions

- Executive Order 11246 clause (seven paragraphs if more than \$10,000 or three paragraphs if \$10,000 or less)
- Title VI Clause
- Access to Records
- Conflict of Interest
- Section 3 (if applicable, the amount of the assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000)
- Section 109 of the Housing and Community Development Act of 1974

Some professional service firms and individuals uniformly use standardized contracts. Although these contracts may contain some or most of the requirements, the Grantee must ensure that all Federal Standards Provisions are incorporated into the contract. The inclusion of these provisions is accomplished by adding **Part II-TERMS AND CONDITIONS (Attachment 5-1)** to the standard contract.

Architectural/engineering contracts for Public Service Districts must be approved in advance by the West Virginia Public Service Commission.

After negotiating the contract, it should be submitted to the appropriate governing body of the Grantee for approval (by resolution) and then executed by both the Grantee and the firm or individual. Award may be made to the responsible vendor whose proposal will be advantageous to the Grantee, price and other factors considered. Unsuccessful vendors should be promptly notified in writing that they were unsuccessful.

The Grantee must then establish a contract file and monitor the contract to ensure that the contract is completed in a satisfactory and timely manner. The contract file must contain:

- Description of method used to select consultants
- Qualification statements, RFPs, and proposal(s) received
- Negotiation methods
- Cost and pricing data supporting the negotiated fee
- Verification of contractor eligibility

- The contract for services
- Records of all payments and supporting documentation
- Contract amendments, if any, and rationale for amendments

Addendum to Professional Service Contracts

All addenda issued to a professional services contract funded in whole or in part with CDBG funds must be approved by the West Virginia Development Office prior to execution.

Common Deficiencies

- Failure to comply with applicable federal, state and local procurement regulations
- Absence of necessary documentation
- Vague or inadequate Scope of Services
- One or more required provisions omitted from contract
- Contracts not written as lump sum, not-to-exceed
- Failure to attach Part II Terms and Conditions to all professional contracts