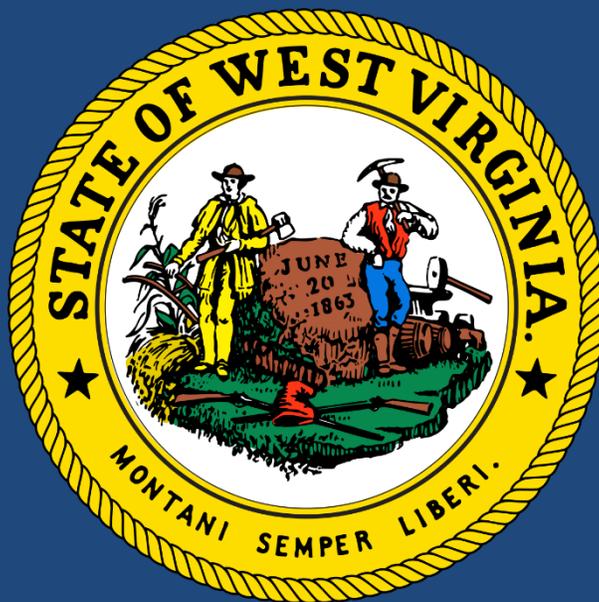


PROCUREMENT POLICIES AND PROCEDURES

CDBG, CDBG-MIT, CDBG-CV and RHP



Effective 11/1/2021

Table of Contents

Introduction	3
Procurement Procedures	3
Procuring Professional Services.....	4
<i>Micro Purchase Procurement</i>	<i>4</i>
<i>Small Purchase Procurement</i>	<i>4</i>
<i>Competitive Procurement</i>	<i>5</i>
RFPs - Request for Proposals	5
RFQs - Request for Quotations:	5
<i>Sole Source Procurement</i>	<i>7</i>
<i>Professional Services by Individuals Employed by the Subrecipient</i>	<i>8</i>
Procuring Architecture and Engineering	8
<i>Total Project Costs Estimated Less Than \$250,000</i>	<i>8</i>
<i>Total Project Costs Estimated to be \$250,000 and Above</i>	<i>9</i>
<i>Negotiation of Fees – Architects/Engineers</i>	<i>10</i>
Debarment Review - Verification of Eligibility	10
Executing a Professional Service Contract.....	11
<i>General Administrative Provisions</i>	<i>11</i>
<i>Scope of Services</i>	<i>11</i>
<i>Compensation Method</i>	<i>11</i>
<i>Federal Standards Provisions</i>	<i>11</i>
<i>Addendum to Professional Service Contracts</i>	<i>12</i>

Introduction

Provides guidance requirements for the procurement of professional services and purchase of products. 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 procurement.

Procurement Procedures

All procurement transactions must be conducted in a manner that provides full and open competition. Procurement procedures should avoid any provisions that would restrict or eliminate competition.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- i. Placing unreasonable requirements on firms in order for them to qualify to do business;
- ii. Requiring unnecessary experience and excessive bonding;
- iii. Noncompetitive pricing practices between firms or affiliated companies;
- iv. Noncompetitive awards to consultants that are on retainer contracts;
- v. Organizational conflicts of interest;
- vi. 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
- vii. Any arbitrary action in the procurement process.

The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications

should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

- ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

Procurement must be in accordance with 2 CFR 200.321, 322, 323, (327 -should be in contract provisions)

§ 200.321 Must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

§ 200.322 Provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

§ 200.323 must comply with section 6002 of the Solid Waste Disposal Act, procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000

Methods of Procurement

Select the most appropriate method based upon the need and nature of the services or products required. The award must be made to the lowest responsive and responsible bidder. If necessary, justification for awarding the contract to any other contract than the lowest bidder and/or justification for rejecting all bids must be submitted to the WVDED prior to contract award. The following monetary thresholds are based off total project cost of service or product – not just the needed service.

Procuring Professional Services

For services / goods other than Architecture / Engineering

Micro Purchase Procurement

- i. \$10,000.00 or less;
- ii. No quotes or advertisements required;
- iii. Purchasing is reviewed by combining all transactions from the same vendor;
- iv. Required Documentation:

1. Subrecipient should have an itemized budget breaking down the required WVDED budget line items to show how each line item is allocated into single transactions per vendor type.

Small Purchase Procurement

- i. \$10,000.01 to \$249,999.99;
- ii. May be used for rehabilitation programs;
- iii. Price or rate quotations must be obtained from an adequate number of qualified sources- at least three or more;
- iv. Subrecipients must place copies of all written bids in the project file to document those firms or individuals solicited and their responses. Emailed bids are acceptable;
- v. No advertisement required;
- vi. Lowest quotation received must be awarded;

vii. Required Documentation:

1. Purchase Order or Contract;
2. Invoicing;
3. Written documentation that addresses the following:
 - a. When did the Subrecipient call?
 - b. What product/specifications did the Subrecipient inquire about?
 - c. What businesses/vendors did the Subrecipient call?
 - d. What was the answer received for each?

Construction and demolition

Sealed Bids - A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

Any or all bids may reject if there is a sound documented reason. The sealed bids method may be the optimal method for procuring demolition under \$250,000 due to multiple contractors needed for asbestos removal and actual demolition.

In order for sealed bidding to be feasible, the following conditions should be present:

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, Required Documentation:

1. Contract-firm fixed price
2. Bids must be advertised in newspaper- providing bidders sufficient response time prior to the date set for opening the bids. Copy of newspaper advertisement and affidavit
3. Copies of bids received from an adequate number of qualified sources at least two.
4. Copy of bid opening minutes and sign in sheet- bids will be opened at the time and place prescribed in the advertisement for bids and must be opened publicly

Competitive Procurement-under \$250,000.00-Architecture and Engineering

Under \$250K (or local requirement if more restrictive) WV Code 5G-1-4

- i. Subrecipient conducts (and documents) discussions with three or more professional firms qualified to perform on the contract
- iii. Publish a Class I legal advertisement (this means it only needs to be published one time)
- iv. After selection, the subrecipient offer or develop the scope of services required and negotiate a contract
- v. Cost reasonableness must be documented

Required Documentation for under and over 250K (before contract awarded):

1. Tear sheet of advertisement
2. Affidavit of advertisement
3. Documentation of the discussions with three or more firms include date held and signature of official who conducted the meeting
4. Scope of service
5. Cost reasonableness form
6. Draft of proposed contract

Competitive Procurement-\$250,000.00 and above

- i. \$250,000.00 and above
- ii. Advertisements required: a written announcement that invites vendors to compete for the provision of services; two options:

RFPs - Request for Proposals

Complete RFP when:

1. Scope is not clearly defined,
2. Firm fixed-price contract (lump sum) is allocated for needed services.

RFQs - Request for Quotations:

Complete RFQ when:

1. Scope is clearly defined.
2. Price and specifications are the only factors used when determining the evaluation,
3. Not procuring Architect/Engineering services, as this method can not be used for procuring those.
4. RFQs request bidders to provide qualifications and/or experience, as well as hourly fee for services.

- iii. Requirements/Guidance for Both:

1. Advertisement must be a Class II Legal Ad;
2. Advertisement should specify that the project is undertaken with CDBG funds, and that federal and state regulations are applicable (2 CFR 200, WV 5G).
3. Two or more qualified bids must be received;
 - a. If RFP/RFQ is advertised and only one bid is received, the Subrecipient must advertise again. If only one bid is still received, they can then award that successful bidder.
4. All bids received must be evaluated;
5. Evaluation/selection committee must consist of 3-5 individuals with subject matter expertise;

6. Identify a formal technical evaluation or selection method for determining responsible vendors. The selection method must be documented and stated in the advertisement. The selection method must include scoring criteria, such as:
 - a. specialized experience or technical expertise
 - b. past record of performance
 - c. capacity to perform the work within time limitations
 - d. familiarity with the type of problems applicable to the project- as well as price.

7. Selection committee ranks bids and selects the three most qualified and reasonable bids;
8. Unsuccessful vendors should be notified promptly in writing and documentation of notification retained in the project files;
9. Selection committee interviews the three most qualified firms, then ranks them;
10. Bidder with highest ranking and meets the minimum qualifications at the lowest price is the successful bidder- awarded;
11. Document cost reasonableness prior to executing contract.

iv. Required Documentation for Both (before contract awarded):

1. Negotiation method that describes how procurement process was determined;
2. Tear Sheet of Class II Legal Ad;
3. Scoring Documentation:
 - a. Description of method,
 - b. Copy of scoring criteria (i.e., years of experience, past performance, capacity, etc.),
 - c. List of selection committee members, title and attendance sheet,
 - d. Scoring tally.
4. Proof of contacting unsuccessful bidder;
5. Conflict of Interest Statement from each scoring committee member
6. Cost Reasonableness Form

v. Required Documentation for Both (after contract awarded, before signature):

1. Grantee Debarment Form
2. Successful vendor's contract;
 - a. Terms & Conditions for Professional Services – must be included in the contract, signed by the successful vendor and Subrecipient.
3. Contract amendments, if any, and rationale for amendments.

For any services procured prior to the award of CDBG funds to any project type, the Subrecipient is responsible for ensuring all required forms in this Chapter are included in the contract with the successful bidder. All required documentation in subsections above (see iv. and v.) must be dated the same date as the executed contract between the Subrecipient and the successful bidder/vendor.

If a Subrecipient plans to apply for CDBG funding the project, the Subrecipient must ensure all services are procured in compliance with 2CFR200, WV 5G, and this policy manual.

In compliance with 2CFR200.324, cost analysis is required for all procurement methods. The Cost Reasonableness Form – achieves the cost analysis requirement; therefore, Subrecipients must ensure this is completed for all procurement. Price Analysis is only needed when procuring through sole source.

Design-Build Procurement

Contract between an agency and a design-build firm to furnish the architectural, engineering, and related services as required for a given public project and to furnish the labor, materials and other construction services for the same public project. Design-Build cannot be used.

Sole Source Procurement

Proposal from only one source or, after solicitation of a number of sources; competition is determined to be inadequate.

- i. Projects of any dollar threshold where one of the following circumstances exists:
 1. The item or service was only available from a single source,
 2. A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement,
 3. Competition was determined to be inadequate after receiving proposals from numerous sources,
- ii. No monetary threshold determines the requirements for this procurement type (no dollar amount tied to level of requirements);
- iii. Subrecipients/project administrators can simply call specialized individuals/organizations and use their services due to the need being so specific/different;
- iv. A pre-existing contract with a vendor is not sufficient reason to use sole source procurement;

- v. Re-using a vendor by letting them “piggyback” on their existing contract is not permitted because it discourages fair and open competition;
- vi. Required Documentation:
 1. Email WVDED CDBG project manager describing what is needed to procure and why those services are needed based on the situation.
 2. Must seek approval from WVDED CDBG project manager only prior to sole source at which time CDBG Manager will request documentation.
 3. A price analysis is always needed for sole source procurement. A price analysis includes a review and evaluation of a proposed price without evaluating separate cost elements where three or more responses are received.

Professional Services by Individuals Employed by the Subrecipient

These employees may be employed in two separate ways.

- i. Professional individuals who are hired on a full-time basis to work for the Subrecipient. These employees meet the IRS definition of an employee. Procurement procedures do not apply to employees of the Subrecipient who are acting in their official capacity and are eligible to be reimbursed to the extent that:
 1. They are reasonable for the services provided;
 2. They follow an appointment made in accordance with state and local laws; and
 3. The amount of compensation charged to the grant will be based on payrolls. Employees that are hired through a competitive process to work for the Subrecipient on a contract basis. The advertisement must clearly state that the employee will work on CDBG project(s) in addition to normal duties.

Procuring Architecture and Engineering

The procurement of A/E services shall meet the requirements set forth in WV Code 5G-1-4. WV Code 5G prohibits the use of price as evaluation criteria. Instead, the price is to be negotiated after the selection of the architect/engineer. Due to this requirement, Request for Proposals (RFP) must always be used for the procurement of A/E services.

Total Project Costs Estimated Less Than \$250,000

\$249,999.99 and below

- i. RFP - Class I legal advertisement, posted once;
- ii. Subrecipient/project administrator conducts (and documents) discussions with three or more professional firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract;
- iii. If special circumstances exist and seeking competition is not practical, the subrecipient/project administrator may obtain the State’s prior approval to select a firm on the basis of previous satisfactory performance and knowledge of the agency’s facilities and needs;
- iv. After selection, the subrecipient/project administrator offers or develops the scope of services required and negotiates a contract;

- v. Required Documentation (before contract awarded):
 - 1. Tear Sheet of Class I Ad;
 - 2. Scoring Documentation:
 - a. Description of method,
 - b. Copy of scoring criteria (i.e., years of experience, past performance, capacity, etc.),
 - c. List of selection committee members, title and attendance sheet,
 - d. Scoring tally.
 - 4. Proof of contacting unsuccessful bidder;
 - 5. Conflict of Interest Statement from each scoring committee member
 - 6. Cost Reasonableness Form

- vi. Required Documentation (after contract awarded, before signature):
 - 1. Grantee Debarment Form
 - 2. Successful vendor's contract;
 - a. Terms & Conditions for Professional Services – Form Number X – must be included in the contract, signed by the successful vendor and Subrecipient.
 - 3. Contract amendments, if any, and rationale for amendments.

Total Project Costs Estimated to be \$250,000 and Above

\$250,000 and above

- i. RFP - Class II legal advertisement, posted once;
- ii. WV Code Chapter 5G prohibits the use of price as evaluation criteria. Instead, the price is to be negotiated after the selection of the architect/engineer;
- iii. When procurement is needed, WVDED encourages firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project;
- iv. A committee of three to five representatives shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service, provided that:
 - 1. If such circumstances exist, such that seeking competition could result in a compromise to public safety, significantly increase costs, or an extended interruption of essential services, the Subrecipient may, with the prior approval of the WVDED, select a firm on the basis of previous satisfactory performance and knowledge of the agency's facilities and needs;
- v. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment;
- vi. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services or both;
- vii. Should the Subrecipient be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable,

price negotiations with the firm of second choice shall commence. Should a satisfactory contract not be negotiated with the second firm, the Subrecipient should contact the third firm. Should a satisfactory contract not be negotiated with any of the selected professional firms, the Subrecipient shall select additional professional firms in order of their competence and qualifications and shall continue negotiations in accordance with this section until an agreement is reached;

- viii. **Please note:** additional requirements listed in WV Code 5G may be applicable to one's project that are not listed in this section. It is the responsibility of the Subrecipient to read all requirements set forth in WV Code 5G 1-4 to determine all requirements have been met.
- ix. After selection, the subrecipient/project administrator offers or develops the scope of services required and negotiates a contract;

x. Required Documentation (before contract awarded):

- 1. Tear Sheet of Class II Ad
- 2. Scoring Documentation:
 - a. Description of method,
 - b. Copy of scoring criteria (i.e., years of experience, past performance, capacity, etc.),
 - c. List of selection committee members, title and attendance sheet,
 - d. Scoring tally.
- 7. Proof of contacting unsuccessful bidder;
- 8. Conflict of Interest Statement from each scoring committee
- 9. Cost Reasonableness Form

vii. Required Documentation (after contract awarded, before signature):

- 1. Grantee Debarment Form
- 2. Successful vendor's contract;
 - b. Terms & Conditions for Professional Services – must be included in the contract, signed by the successful vendor and Subrecipient.
- 3. Contract amendments, if any, and rationale for amendments.

Negotiation of Fees – Architects/Engineers

WV Code 5G prohibits the use of price as evaluation criteria. It is to be negotiated after the selection of the architect/engineer. Due to this requirement, a cost reasonableness form – Form Number X – must be executed, documented, and dated prior to the execution date of the contract.

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.

Price analysis is a review and evaluation of a proposed price without evaluating separate cost elements where 3 or more responses are received.

Debarment Review - Verification of Eligibility

When a successful vendor has been selected, a debarment review must be conducted prior to contract execution. Entities must be registered in SAM.gov to qualify for federal awards which are reported to the public through USASpending.gov. All entities need a UEI to apply for funding.

The Federal Debarment review may be conducted at: www.sam.gov. The verification must be placed in the project file.

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

General Administrative Provisions

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

Scope of Services

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

Compensation Method

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

Federal Standards Provisions

- i. Executive Order 11246 clause (seven paragraphs if more than \$10,000 or three paragraphs if \$10,000 or less);
- ii. Title VI Clause;
- iii. Access to Records;
- iv. Conflict of Interest;
- v. Section 3 (if applicable, the amount of the assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000);
- vi. 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 Subrecipient must ensure that all Federal Standards Provisions are incorporated into the contract. The inclusion of these provisions is accomplished by adding the required Terms & Conditions for Professional Services – Form Number X – 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 Subrecipient for approval (by resolution) and then executed by both the Subrecipient and the firm or individual. Award may be made to the responsible vendor whose proposal will be advantageous to the Subrecipient- price and other factors considered. Unsuccessful vendors should be promptly notified in writing that they were unsuccessful.

Record retention requirement

The Subrecipient must include in the project file and monitor the contract to ensure that the contract is completed in a satisfactory and timely manner. The following must be in the file:

- i. Description of method used to select consultants;
- ii. Qualification statements, RFPs, and proposal(s) received;
- iii. Negotiation methods;
- iv. Cost and pricing data supporting the negotiated fee;
- v. All forms and attachments listed in this Chapter for each service/vendor procured;
- vi. Verification of vendor eligibility;
- vii. The contract for services;
- viii. Records of all payments and supporting documentation;
- ix. 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 WVDED prior to execution.



NON-CONFLICT OF INTEREST FORM

Completion Instructions

WVDED requires all evaluators of solicitations, despite the type of transaction, to sign a Certification of Non-Conflict of Interest, in accordance with the West Virginia Code §5A-3-31. By signing this certification, the evaluator(s), advisor(s) and the agency procurement officer attest that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the subrecipient.

The procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members. Please note that this requirement applies to all transaction types.

The Non-Conflict of Interest Form must be submitted to WVDED with procurement documentation.

CERTIFICATION OF NON-CONFLICT OF INTEREST

West Virginia Code § 5A-3-31: "It shall be unlawful for any person to corruptly combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of commodities or printing to the state under the provisions of this article if the purpose or effect of such combination, collusion or conspiracy is either to (1) lessen competition among prospective vendors, or (2) cause the state to pay a higher price for such commodities or printing than would be or would have been paid in the absence of such combination, collusion or conspiracy, or (3) cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors. Any person who violates any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, and be fined not exceeding five thousand dollars."

West Virginia Code § 6B-2-5(b)(1): "A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person." West Virginia Code § 6B-2-5(d)(1): "[N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a



contract which the official or employee may have direct authority to enter into, or over which he or she may have control.....”

The individual(s) listed below have been charged to evaluate or serve as members or advisors of an evaluation committee for the solicitation as specified

[_____]

By signing this form, each individual acknowledges that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified above with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division.

Name/Title

Agency

Signature

Date

State of West Virginia: Community Advancement and Development
Conflict of Interest Disclosure



Conflict of Interest Disclosure Form

Note: A potential or actual conflict of interest exists when commitments and obligations are likely to be compromised by the applicant's or agent's other material interests, or relationships (especially economic), particularly if those interests or commitments are not disclosed. This Conflict of Interest Form should indicate whether the applicant or agent has an economic interest in, or acts as an officer or a director of, any outside entity whose financial interests would reasonably appear to be affected by the awarding of federal funding. The applicant or agent should also disclose any personal, business, or volunteer affiliations that may give rise to a real or apparent conflict of interest. Relevant Federally and organizationally established regulations and guidelines in financial conflicts must be abided by to consider awarding federal funds.

Applicant/Agent Name: _____ Date: _____

Program: _____

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest:

I have no conflict of interest to report.

I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own:

- 1.
- 2.
- 3.

I hereby certify that the information set forth above is true and complete to the best of my knowledge. **WARNING:** Any person who knowingly makes a false claim or statement to the Department of Housing and Urban Development (HUD) may be subject to civil or criminal penalties under 18 U.S.C.287, 1001 and 31 U.S.C. 3729. Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willfully making false or fraudulent statements to any department of the United States Government.



West Virginia Department of Economic Development
Grantee (Subrecipient) Debarment Review Certification

Subrecipient		Project Number	
Project Name			
Address		Phone	
City		State	Zip Code

Debarment Review Completed By	
Title of Reviewer	
Reviewer's Organization	
Chief Elected Official	
Title of Chief Elected Official	

By signing this certification, both the Reviewer and the Chief Elected Official certify all necessary actions were taken to complete the debarment check and that the Subrecipient listed above is not suspended or debarred from conducting business with, or receiving funding from, the United States government.

Signature of Reviewer *Date*

Signature of Chief Elected Official *Date*

***Please submit a copy of this Certification to the West Virginia Development Office.
Keep the original, signed Certification in the CDBG-MIT project file.***

For additional information, please contact WVDED at 304-558-2234



**West Virginia Department of Economic Development
Grantee (Subrecipient) Debarment Review Certification**

**West Virginia
CONTRACTOR DEBARMENT REVIEW CERTIFICATION**

SAM.gov and State Certification Regarding Debarment and Suspension Instructions

All Grantees will be required to conduct debarment reviews on all sub-recipients and contractors receiving funds. These checks will be completed by using the form provided. The completed form should be placed in your records in a separate folder. Two reviews are required:

1. Federal System:

Grantees should use the System for Award Management (SAM) website, www.sam.gov, to determine if the potential contractor is excluded from receiving Federal contracts.

2. State System:

Grantees should use the Division of Purchasing website to determine if the potential contractor is excluded from receiving State contracts.

www.state.wv.us/admin/purchase/Debar.html.

For proposed sub-recipients, the checks must be completed prior to submission of the application. Upon award of grant funds, reviews must be completed prior to signing a contract for services.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989 Federal Register (pages 4722-4733).

1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective shall attach an explanation to this proposal.



Cost Reasonableness Form

Per 2 CFR 200 cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally funded. In determining reasonableness of a given cost, consideration must be given to:

Is the cost of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award?

Yes No

Are the goods or services comparable to market prices for the geographic area?

Yes No

What are the comparable goods and services cost for your area? Attach a sheet if necessary

Did the individuals concerned act with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government?

Yes No

Did the procurement significantly deviate from your established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost

Yes No If yes, explain

Signature of Authorizing Official

Title

Printed Name

Date

WV DEPARTMENT OF ECONOMIC DEVELOPMENT
TERMS AND CONDITIONS

CONTRACTS OVER \$10,000
PART I – TERMS AND CONDITIONS

1. Termination of Contract for Cause

If through any cause the Consultant shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the Subrecipient shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract shall, at the option of the Subrecipient, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Consultant shall not be relieved of liability to the Subrecipient for damages sustained by the Subrecipient by virtue of any breach of the Contract by the Consultant and the Subrecipient may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the Subrecipient from the Consultant is determined.

2. Termination for Cause and Convenience of the Subrecipient

The Subrecipient may terminate this Contract at any time by giving at least thirty (30) day's notice in writing to the Consultant. If the Contract is terminated by the Subrecipient as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant.

3. Reports and Information

The Consultant, at such times and in such forms as the Subrecipient may require, shall furnish the Subrecipient such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith and any other matters covered by this Contract.

4. Copyrights and Inventions

No report, maps or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant.

5. Records and Audits

The Consultant shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Subrecipient to assure proper accountability for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Subrecipient, HUD, the Comptroller General of the United States, the State of West Virginia, or any authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted to the Subrecipient.

6. Changes

The Subrecipient may, from time to time, request changes in the scope of services of the

Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the Subrecipient, Consultant, and the State of West Virginia shall be incorporated in written amendments to this Contract.

7. Compliance with Local Laws

The Consultant shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Consultant shall save the Subrecipient harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

8. Nondiscrimination

P.L. 88-352: Refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Implementing regulations are found in 24 CFR Part I. P.L. 90-284: Refers to Title VII of the Civil Rights Act of 1968 (42 U.S.C. 3601-20 et. seq.) popularly known as the Fair Housing Act which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap, or familial status. The Subrecipient further certifies that it will take actions necessary to affirmatively further fair housing. Executive Order 11063, as amended by Executive Order 12259, requires that taking of all actions necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use of occupancy thereof. Implementing regulations are contained in 24 CFR 107.

Section 109 of P.L. 93-383 requires that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with community development funds.

Section 109 of the Act further provides any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et. seq.) or with respect to an otherwise qualified person as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply.

The Subrecipient shall ensure that its activities are consistent with requirements of both § 5-11A which discusses the additional protected classes under the West Virginia State Fair Housing Act and § 5-11 which discusses the additional protected classes under the West Virginia State Human Rights Act.

9. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

10. Architectural Barriers Act of 1968 (24 CFR 570.606)

Every building or facility (other than a privately owned residential structure) designed, constructed or altered with funds made available under this part, shall comply with the requirements of the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117, 1-R 19 subject to the exceptions contained in 41 CFR Subpart 101-19.604, issued pursuant to the Architectural Barriers Act of 1968, 42 USC-4151. Procurement procedures and Contracts for the design, construction alteration (including rehabilitation) of public or private structures subject to this requirement should include provisions obligating the Contractor to comply with the Specifications.

11. Interest of Member of a Subrecipient

No member of the governing body of the Subrecipient and other officers, employees or agents of the Subrecipient and the Regional Planning and Development Council who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in the Contract and the Consultant shall take appropriate steps to assure compliance.

12. Interest of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in the Contract, and the Consultant shall take appropriate steps to assure compliance.

13.

Interest of Consultant and Employees

The Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.

14. Rights to Inventions and Materials

Contracts or agreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields which directly concern public health, safety or welfare; or experience outside of work funded by federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by the federal grantor agency. Although HUD presently has no regulations governing these matters, use of the following contract provisions reflects current Department policy:

a. If the Contractor or an employee of the contractor produces patentable items, patent rights, process or inventions as a result of this agreement, the Contractor shall promptly and fully report such production to the Regional Planning and Development Council which shall in turn report it to HUD. HUD shall determine whether protection on such invention or discovery shall be sought in the name of the United States Government and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy."

b. If the Contractor or an employee of the Contractor produces a book or other copyrightable material as a result of this agreement, the author or authors may copyright the book or material, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government purposes.

15. Access to Records

All negotiated contracts awarded by Subrecipient s shall include a provision to the effect that the Subrecipient ,HUD the State of West Virginia, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and descriptions.

Subrecipient Signature ***Date***

Vendor Signature ***Date***