

# CHAPTER J:

## EQUIPMENT

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This chapter is designed to provide assistance in the procurement of equipment or non-construction expenditures of CDBG funds. The use of CDBG funds to acquire equipment requires application of the same state, federal and HUD compliance criteria, including, but not limited to Fair Housing/Equal Opportunity, Environmental Review requirements, recordkeeping, Close-out procedures, etc.

Generally with the exception of small dollar procurements (those under \$2,500), the procurement of equipment follows the same essential steps as are implemented with construction projects. This chapter seeks to provide guidance that allows for compliance with State and Federal Law, HUD and TNECD CDBG requirements.

Equipment procurement requires compliance with all CDBG rules. Contract conditions must be removed, and a release of funds must be issued to engage in any activity other than the environmental review, administrative and or design costs (see Chapter A: Environmental for further guidance). The grantee is required to follow all Fair Housing and Equal Opportunity requirements and must engage in a fair, open and competitive bidding process. TNECD must pre-approve any and all processes used to acquire equipment.

## PROCUREMENT

### PROCUREMENT PROCEDURES

All municipalities and counties in the State of Tennessee are governed by a procurement policy. If a municipality or county does not have a specific procurement policy or law established through charter provision or private act, the County Purchasing Law of 1983 (Tenn. Code Ann. §§ 5-14-201-07 et seq.) or the Municipal Purchasing Law of 1983 (Tenn. Code Ann. §§ 6-56-301 et seq.) apply. Both laws require formal bidding for all purchases of \$2,500 or greater. Municipalities and counties may lower this limit to less than \$2,500 or, through ordinance, may increase to this limit to a maximum of \$10,000.

**Note:** The grantee is responsible to ascertain whether the local procurement policies or federal procurement policies apply. The stricter standard must be used.

### SMALL DOLLAR PURCHASES

Informal methods that are sound and appropriate are allowed for the procurement of supplies and other property whose total cost is **not more than the local bidding limit** (\$2,500 in most cases)

Price or rate quotations must be obtained from at least three qualified sources. These quotations may be obtained in writing, via email, or over the telephone. The contract should be awarded to whoever submits the lowest price quotation that meets the required specifications. Use of this method of procurement must be approved by TNECD prior to accepting quotes.

Once quotations have been received and the vendor has been selected, the following documents should be submitted to TNECD:

1. A list of items solicited
2. A full list of all vendors solicited with quotes for items solicited
3. The name and address of the vendor selected, along with the item and quote
4. A letter of recommendation from any of the following:
  - a. The grantee Mayor or County Mayor/Executive,
  - b. The engineer, or
  - c. The EMS professional or Fire Chief that has been consulted in selecting the equipment.
5. Certification of Bidder regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.

Once TNECD approval has been received, a budget revision may be submitted to proceed with the purchase of equipment.

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| <b>PROCUREMENTS THAT REQUIRE FORMAL BIDDING</b> |
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Items to be purchased over \$2,500 (or local bidding limit) must be formally procured. Specifications for the equipment must be developed with an engineer, Fire Chief or EMS director before being submitted to TNECD for approval. The items and scope of work contained in the specifications must be consistent with the application and grant award. Specifications are due to TNECD within 90 days of the release of funds. Many delays and unnecessary costs can be prevented through careful and comprehensive preparation of the specifications.

Specifications must include the following documents and be advertised in the legal section of a daily newspaper for at least 14 days:

1. A comprehensive listing of items and quantities that are being solicited
2. Information for bidders (which should include sections for: Receipt and Opening of Bids, Method of Bidding, Preparation of Bids, Responsibility of Bidder, Responsibility of Owner, Time of Completion and Liquidated Damages, Addenda and Interpretations)
3. Certification of Bidder Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
4. A note stating that in the event of conflicts between documents, the more restrictive set shall apply
5. An appropriate cost and pricing format depending on whether the project is to be bid as a lump sum or unit price
6. The specifications for the equipment
7. Prevailing Wage Rate (if applicable)
8. Bonds (if applicable)
9. Conditions applicable to Bid Award

Fair and open competitive bidding prohibits the identification of any particular brand. If specifications contain reference to a brand language, the opportunity for a bidder to provide an

equal to or equivalent brand must be included. On rare occasions, a specific brand can be allowed. When submitting specification and bidding documents to TNECD, the engineer, administrator, fire chief or EMS director should provide an explanation for why a specific brand is requested and this must be approved by TNECD. However, in general, specifications targeted to a specific brand of equipment are not allowed; this includes specifications for a certain brand or model where the only change is to add “or equivalent” to the document. The grantee is responsible for ensuring that this requirement is followed.

As in construction documents, the use of alternates in bid specifications is encouraged. The inclusion of deductive alternates allows for a better chance of not repeating the bidding process if the bids exceed the contract budget. The inclusion of additive alternates provides the ability to take advantage of bids that come in under budget without submitting a change order.

Any use of alternates, whether deductions or additives, may not change the scope of the project. The approval of plans and specifications does not implicitly nor explicitly provide a scope change approval.

Once approved by TNECD, a letter will be sent to the grantee authorizing advertisement for bidding of the equipment. Advertisement of the project before TNECD approval of plans and specifications or any addenda may result in rebidding.

## **REVISIONS**

Once the bid package is approved, any and all changes to the bid documents must be resubmitted for approval. If changes to the approved bid documents are made prior to advertisement and issuance, the grantee will be required to submit the revised plans and specifications to TNECD for approval. The bid opportunity may not be advertised until notice from TNECD is received.

## **ADDENDA**

Changes to the approved bid documents subsequent to advertisement and issuance require an approval of an addendum from TNECD before addendum are issued to prospective bidders.

A best practice is to set a firm deadline for bidders to submit questions or hold a pre-bid conference so enough time is available to get the addendum approved by TNECD and issued to the potential bidders. State law requires all addenda to be issued 48 hours prior to bid opening. TNECD requests any addenda needing approval be submitted five days prior to bid opening.

Addendum requests must include:

1. the addendum (and an explanation of the changes and why they are necessary),
2. the date of the bid opening,
3. the project name and year,
4. and an explanation of the project.

Specifications should include a section about the method of issuance of addendum.

## **EQUIPMENT PROCUREMENT THAT INCLUDES CONSTRUCTION**

Equipment may include construction for installation and require the service of an engineer, such as installation of a generator. Equipment may also fall into a category that does not require construction, an engineer, or design but may require installation and/or assembly.

In the event equipment involves construction requiring engineering services and the design of plans and specifications (i.e. generator), all requirements of construction projects must be followed. All aspects of the project include the same requirements of construction projects including, but not limited to, approval of plans and specifications, a formal bidding process, meeting any criteria set forth in the LOREC, Davis-Bacon, following acquisition requirements, and must also include a section in the plans and specifications that applies to the equipment. See Chapter E: Labor for additional information on the construction bidding process.

In order for a project to fall within the purview of assembly or installation, the project cannot require construction or design; it is installation and/or assembly rather than construction. An example of this type of project is a siren that will be mounted onto existing poles. Specifications for “turnkey” projects requiring installation and/or assembly must include language that provides that the installation and/or assembly of the equipment is part of the bid. This does not exclude the project from Davis-Bacon requirements; there must still be consideration for whether the installation/assembly costs are above 13% of the total cost of the equipment purchase.

In instances where the cost of installation could exceed the 13% threshold, include the correct prevailing wage rate and language stating that “in the event the cost of installation of the equipment exceeds an incidental amount of bid award amount, the requirements of the Davis-Bacon Act must be followed” in the bid package to be sent to potential bidders. If the upon award the project it is determined to exceed the 13% threshold, the grantee shall make known to the contractor that the Davis-Bacon Act applies, and the project will be treated as a construction project.

The grantee may elect to use lump sum or unit pricing formats for the bid specifications. Submitting a lump sum bid form will include the ability to procure equipment as well as perform necessary construction and or necessary installation and assembly.

## **THE BIDDING PROCESS**

Once the letter approving the submitted plans and specifications by TNECD has been received, the bid advertisement can be placed. All items in the bid package must be identical to the approved specifications. If the items in the bid package do not match the specifications and addendum issued have not been approved, TNECD will not approve the bid tabulations, and the grantee will be asked to resubmit the plans and specifications and repeat the bidding process.

Bid openings are to be held no later than 45 days after the approval of the plans and specifications. The bid tabulations are due to TNECD no later than 14 days after bid opening.

Any problems meeting these deadlines should be brought to the attention of TNECD before the deadline has passed.

The solicitation for bids requires public advertising as required by Federal procurement regulations. At minimum, advertisements must be published in a daily paper 14 days prior to bid opening (not counting the day of publication or the day of the bid opening). TNECD will not approve bid tabulations having resulted from a bid opening that has not been publicly advertised. The grantee is responsible for checking the publication and confirming the advertisement has been published.

If a grantee has multiple specifications, they can be advertised in the same notice. Each specification for which a grantee is seeking bids in the advertisement must be identified.

TNECD highly encourages the placement of advertisements in additional regional or local newspapers, trade publications, etc. Other forms of communication, such as email and postal mail to send the information to vendors may be used as well. Document all efforts to disseminate the bid package and bid opening information. TNECD is maintaining a list of potential vendors. Please check with the office for this list.

The grantee must attempt to solicit bids from any Female and Minority Owned Businesses. Use the TDOT and Go-DBE minority contractor lists.

- <http://www.tdot.state.tn.us/dbedirectinternet/>
- <http://www.tn.gov/businessopp/regdivcomp.html>

Retain copies of all written attempts to solicit female and minority owned business, and keep copies in the community's files. This solicitation is a requirement of the grantee's Fair Housing and Equal Opportunity obligations. If Section 3 or any other Equal Opportunity provisions apply, be sure to include this information in the bid advertisement.

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| <b>BID TABULATIONS</b> |
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No later than 14 days from the bid opening, submit the bid tabulation package to TNECD for approval. Approval from TNECD is required prior to awarding of the contract.

The selected bid must be within the approved budget amount. The contracted grant total cannot be increased. If a grantee has received bids that all exceed the amount budgeted, refer to the "Bid Overages and Using Deductive Alternates" section below and submit any additional required documents to resolve the overage.

The lowest, most responsive bidder must be selected. Any deviation from the selection of the lowest bidder requires a letter of written justification to TNECD explaining the basis for the selection. Preference of a brand is not justification.

If no exceptional results have occurred, TNECD requires the following materials in the bid tabulation submission:

1. The detailed bid tabulations

2. Certification of Bidder regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion
3. The signed Drug Free Workplace Affidavit (if applicable)
4. The 10-day wage check (if applicable)
5. A letter of recommendation that includes the name and address of the selected bidder and the amount of the recommended award. Letters of recommendation must come from the Mayor or County Mayor/Executive of the community, the engineer, the Fire Chief or the EMS Director. (This should be the most appropriate person for the project.)
6. A copy of the bid advertisement. The copy must include the date. If a copy of the advertisement with the date is not available, an affidavit of publication must be included instead.
7. Minutes of the bid opening
8. A statement providing the date of TNECD approval and issuance to bidders of any addenda.

Once TNECD approval has been received, a budget revision may be submitted and the grantee can proceed with the purchase of equipment.

At the time the contract for the equipment is awarded, a Notice of Contract Award must be sent to TNECD specifying the equipment and the vendor. The grantee will receive a contractor/subcontractor activity report which must be returned to TNECD within 30 days.

A copy of the executed specifications and bid package must be kept in the community's files.

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| <b>USING ADDITIVE ALTERNATES</b> |
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Using additive alternates in bidding provides the grantee with the opportunity to increase equipment procurement in the event the received bids result in residual available funds. If additive alternates have been used, apply the alternates one at a time in the order they are listed until the available budget has been exhausted or clearly define how the additives will be applied and receive approval from TNECD for that process. The alternates may be additional quantities or additional equipment.

If additive alternates are not included and the grantee intends to take advantage of low bids by increasing the quantities of items, a change order must be submitted to TNECD requesting the increase in items. Change orders cannot be used to request items that were not in the specifications. If the grantee intends to procure items not in the specifications, the specifications must be submitted to TNECD for approval before employing a new bidding process. This includes additions to the equipment being procured, such as a winch on a fire truck that was not included in the vehicle specifications.

## BID OVERAGES AND USING DEDUCTIVE ALTERNATES

Occasionally bids may exceed the amount of funds available. Using deductive alternates can greatly lower the likelihood of having to re-bid. The grantee cannot negotiate the contract price solely with the lowest bidder. Negotiation with the low bidder will result in the disallowance of costs for reimbursement with grant funds. If an overage does occur, the following options are available.

1. Determine if additional funding is available from other sources. If additional funding is available and the bid is awarded, a letter of commitment from the source of additional funding to the fund the outstanding amount must be included in the bid tabulation submission.
2. Apply to TNECD for a re-allocation of funds. Provide a written request and justification for the re-allocation and approval of a budget revision. Note that additional grant funds cannot be provided.
3. If deductive alternates have been included in the specifications, first determine if the use of alternates will impact the scope of the project. If the scope of the project will not be impacted, the alternates are to be applied one at a time in the order they are listed in the specifications. Apply the deductive alternates until the adjusted bids are within the available budget.

After applying the deductive alternates a bidder who initially was not the lowest bidder may be awarded the project. Be sure to apply the alternates fairly and to each bid. TNECD must review the procedure used before the project is awarded.

If any of the options above do not result in bringing the bid within the budgeted amount the grantee may write to TNECD and exercise one of the following options:

4. Submit in writing to TNECD an explanation of what has transpired during the bidding process and that the attempts to bring the received bids into budget have failed. Provide a statement requesting to reject all submitted bids and rebid the project. If changes to the approved plans and specifications are necessary, provide revised plans and specifications to TNECD for approval. Changes to the bid specifications **must not change the scope of the project**. If approved, the advertising process will be implemented using the revised specifications.

Or

5. Submit in writing to TNECD an explanation of what has transpired during the bidding process, state that all initial bids are being rejected and request permission for a mini re-bid. Consult with project administrator and any other consultants to determine which items can be omitted from the bid specifications. Changes to the bid specifications **must not change the scope of the project**. Include in the letter a detailed listing of all changes. If TNECD approves the request, all bidders will be contacted by certified mail or email

with a confirmed receipt and requested to resubmit sealed bids reflecting the revised bid schedule. The bidders must be given at least seven days to submit new bids and must be informed of the right to change any of the prices in the original bids, as long as the bids conform to the revised bid specifications. The contract will then be awarded to the lowest, most responsive bid.

If all bids received in the second bidding are still greater than the amount of the budget, repeat any of these options or decide that the project, as originally submitted in the application cannot be performed for the amount of money budgeted and return the grant funds to TNECD.

### **NO BIDS RECEIVED**

In the event that a bid opening does not result in the receipt of any bids, the advertising process will need to be repeated with increased efforts including additional newspapers, trade publications or solicitation of additional vendors. TNECD encourages grantees to contact other communities and inquire as to vendors that have responded to other similar bid opportunities.

### **SINGLE BID**

The receipt of only one bid at a bid opening does not necessarily mean that TNECD will not approve the bid tabulations. If the received bid meets the purpose of the project, include all efforts that were employed to secure bids in addition to the required bid tabulation materials submitted to TNECD.

TNECD will review the information to determine if a good faith effort was made to achieve a fair, open, and competitive bidding process. The likelihood of approval will be enhanced with greater efforts to secure bids.

### **CHANGE ORDERS**

Change orders may be used on equipment contracts. Change orders for equipment follow the same rules that apply to construction contracts.

Change orders are alterations from the original contract that require a modification (an increase or decrease) in project cost, engineering charges, quantity, or schedule. Change orders must stay within the original scope of the project and require a justification of the need for the change. Change orders may be submitted to TNECD by the project administrator, engineer, or community, and they must be approved before any work or activity including the changes is done. If submitted by the engineer, grantees should ensure that the administrator has reviewed and approved the changes. A budget revision must be submitted after the change order is approved.

Change orders are only appropriate if:

1. The proposed work or purchase has not been initiated,
2. A previously approved set of specifications is changed,
3. No new items are added that were not on the approved specifications, and
4. The aggregate amount of all change orders does not exceed 25% of the approved budget for the equipment.

## SCOPE CHANGES

Scope changes are the result of a project being altered beyond the original scope of work set forth in the contract (the original design, intent, or area of service), and they must be approved by TNECD. Grant awards are based on the application that was submitted and a grantee's needs, and rarely should those needs change in the course of a project. If a grantee feels that a change in the scope of the project is necessary, contacting the TNECD Project Representative is the first step. The Project Representative will work with the grantee to determine the best course of action for the project.

Additionally, if the combined change orders total 25% or more of the cost of construction or equipment, this may result in a scope change, and the project or the additional equipment may have to be bid.

A formal written request from the grantee must be submitted to TNECD for scope changes. Depending on the type of equipment (fixed versus mobile equipment), the request may include a map showing the change, a summary of the people to be served including LMI people, and a cost estimate as well as justification from the engineer, Fire Chief, or EMS director detailing why the change is necessary and information on how the changes will be funded. After review, if TNECD determines the changed project would have been funded under the application criteria, the change will likely be approved. Grantees shall not proceed with the requested changes until written approval from TNECD is received.

Scope changes may require an additional environmental review or an addendum to the environmental review (i.e. a change in the location of a generator or weather sirens). If a change to the Environmental Review is necessary, refer to Chapter A for direction. Scope changes may require a contract amendment as well. When communities request scope changes, the contract should be referenced to determine if an amendment is required. If required, work cannot begin until the contract amendment is approved.

Major reductions in the scope of the proposed work can result in adverse State action including grant reduction, termination, or a finding of ineligibility for subsequent funding.

## **DOCUMENTATION**

Throughout the process of purchasing equipment, take care to document all stages of the transaction and maintain copies in the community files. This documentation includes, but is not limited to, the bidding process, invoices, correspondence with vendors, etc. Photographs of the equipment should be placed in the community files and submitted to TNECD. If photographs are not provided to TNECD, the project representative will ask for them at the time of monitoring and/or close out.