

CHAPTER G:

BIDDING AND PROCURMENT

G.1 PREFACE

This chapter a guide to the various procurement and bidding processes that may be used for CDBG projects. The sections include preparation of the bid package, bidding procedure, and procurement requirements. The sections are set up to be utilized as checklists enabling the grant administrator to easily ascertain which activities have been completed and which are left to complete.

G.2 PRE-BID/ PROCUREMENT CONSIDERATIONS

G.2.a Conflicts of Interest and the Code of Conduct

During the procurement goods or services instances may arise where competition can be restricted by organizational conflict of interest or non-competitive practices among contractors. Communities should be alert to issues of this nature which may adversely affect procurement practices.

Each community must have a written Code of Conduct which specifically prohibits elected officials, staff or agents from personally benefiting from CDBG procurements. The code must prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors, and it must provide sanctions or penalties for violations of the code of conduct by local government officials, staff or agents, or by contractors or their agents. "Standards of Conduct" prescribed by HUD's Office of Inspector General is included as Exhibit A-6 of this manual. A copy of these standards of conduct must be placed in your CDBG files. If the community already has a code of conduct, a copy of that code must be made and placed in the CDBG files in addition to the HUD Standards of Conduct.

G.2.b Other Requirements

- Procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to ensure costs are "reasonable".
- Invitations for bids or requests for proposals must be clearly written and must describe the technical requirements of the equipment or services without requesting a certain brand.
- Positive efforts must be made to use small and/or minority-owned businesses. (See the "Chapter C: Fair Housing and Equal Opportunity" for minority bid solicitation requirements)
- The method of contracting (fixed price, cost plus fixed fee, purchase orders, etc.) should be appropriate. Cost plus percentage of cost contracts are specifically prohibited if CDBG funds are involved.

G.2.c Procurement Procedures

All cities, towns, and counties in the State of Tennessee are governed by some sort of procurement policy. Policies vary from community to community. If a town or county does not have a specific procurement policy or law, the County Purchasing Law of 1983 (Tenn. Code Ann. § 5-14-201), or the Municipal Purchasing Law of 1983 (Tenn. Code Ann. § 6-56-301) will apply. Both laws require formal bidding for all purchases of \$2,500 or greater. Some cities and counties in Tennessee have procurement policies that require formal bidding for purchases less than \$2,500.

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

G.3 SMALL DOLLAR PROCUREMENT REQUIREMENTS

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).

G.3.a Small Dollar Purchases of Equipment, Supplies, And Non-Professional Services

Price or rate quotations must be obtained from at least three qualified sources. These quotations may be obtained over the telephone (maintain written record of calls in the grant files). The contract should be awarded to the offeror with the lowest price quotation.

G.3.b Professional Service Contracts

Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least three firms that offer the type of service the community wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required. The contract must be awarded solely on the basis of qualifications, not price. Stating “this is the firm the community has always used” is not sufficient reason for award. Often a method of scoring applications based on history, experience, price, qualifications, etc. is conducted.

G.4 PROCUREMENTS THAT REQUIRE FORMAL BIDDING

Procurements of equipment, non-professional services and construction contracts where the total cost is more than the local bidding limit (\$2,500 in most cases) must formally advertise for sealed bids and a public bid opening in a newspaper of general circulation.

G.4.a Advertisement Requirements

The invitation to bid must be published in a daily newspaper of general circulation at least **14 days prior** to the public bid opening.

NOTE: *The Environmental Protection Agency (EPA) requires the invitation to bid to be published in a newspaper of entitlement city at least 30 days prior to the bid opening; grantees must follow EPA's advertisement requirements if EPA funds are in the project. Entitlement communities are Bristol, Chattanooga, Clarksville, Hendersonville, Jackson, Johnson City, Kingsport, Knoxville, Memphis, Murfreesboro, Nashville, Oak Ridge, Morristown, and Cleveland.*

One method to increase the circulation of an invitation to bid is to advertise in the Dodge Report. While this advertisement is free of charge, TNECD will not accept it as a substitute for an advertisement in a newspaper of general circulation.

G.4.b Deductive and Additive Alternates

The use of alternates in bidding is recommended to allow for flexibility in the case the bids greatly differ from the estimated costs of the project. A bid package may include additive and/or deductive alternates. The use of bid alternates may not alter the scope of the project.

A deductive alternate is a portion of the project that can be deleted to bring construction costs within the budget if all bids received exceed the funds available for construction. When deductive alternates are applied, they must be done so in the order in which they are listed in the bid specifications.

If using additive alternates, the alternates are applied in the order they are listed in the bid specifications to the base bid until the budget is reached.

G.4.c Bid Opening Requirements, Rejection and Award to Low Bidder

Formal bidding of goods and services requires for bids to be sealed and submitted in the manner detail in the bid documents distributed or acquired by potential bidders. Potential bidders are instructed to submit the sealed bids to a specific address by a specific time. Bids that are not received in the appropriate manner as directed should be disallowed and not opened. Sealed bids must be opened publicly at the time and place specified in the invitation to bid.

Rejection of Improper Bids

Any and all bids may be rejected when sound business reasons are documented for rejecting bidders.

Award to Low Bidder

A firm fixed-price contract must be awarded to the lowest responsive and responsible bidder whose bid conforms to all bid specifications. If the lowest cost bid is not accepted, justification should be presented in writing to TNECD for approval before accepting the bid. For construction projects the justification may be submitted by the project engineer with a letter of concurrence from the mayor or county executive.

Prohibition Against Negotiation with Bidders

If all bids received exceed the amount of the construction budget, a grantee may not negotiate the contract price with any bidder, especially the low bidder. Negotiation solely with the low bidder is a violation of CDBG policies and procedures.

NOTE: *NEGOTIATION OF THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER WILL RESULT IN THE DISALLOWANCE OF CONSTRUCTION COSTS FOR REIMBURSEMENT WITH GRANT FUNDS.*

G.4.d Allowable Alternatives If All Bids Exceed the Amount of the Construction Budget

If all bids received are over-budget the grantee has three alternatives for next steps:

1. Provide the additional funds needed to pay for the contract from local funds. (May require a resolution for the commitment of additional local funds.)
2. Rebid the project.
3. Alter the project as follows:
 - a. Consult with the project engineer and decide which items would be feasible to eliminate from the construction bid specifications.
 - b. Submit a letter detailing all requested changes in the bid specifications to TNECD for approval.
 - c. After receiving written approval of these changes, contact all bidders who submitted bids for the initial bidding by certified mail and request that they resubmit sealed bids without the removed items over the amount of the construction budget, communities have

NOTE: *Changes to bid specifications must not change the project's scope.*

NOTE: *Bidders must be informed that they have the right to change the unit price of any of the line items in their original bid, as long as they conform to the revised bid specifications.*

Award the contract to the bidder submitting the lowest bid that conforms to the revised bid specifications (i.e., the original bid specifications less the deleted items).

If all bids received in the second bidding are still greater than the amount of the budget, grantees should repeat any of these three alternatives 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 the State.

G.5 COMPETITIVE NEGOTIATION

Competitive negotiation must be used for professional service contracts and may be used if no acceptable bids have been received after formal advertising (Contact TNECD for permission before this occurs).

G.5.a Professional Service Procurement

This section applies to all professional service contracts paid in whole or in part with CDBG funds.

Common professional services that are used for CDBG projects include administration, housing rehabilitation inspection/management, relocation management, engineering, land surveying, architectural work, auditing, and legal counseling. If CDBG funds are not used for such services, this section will not apply.

NOTE: *Professional service procurement procedures must be performed prior to the performance of any work by the professional service contractor. If professional service procurement procedures are not performed correctly, fees for professional services must be paid with local funds.*

However, procurement procedures do not have to be performed prior to the submission of the grant application if professional services are unnecessary in order to submit the grant application.

Example: If a preliminary engineering report is to be a part of the application, the procurement procedures for the engineering services must be performed prior to selection of the engineer who then prepares the preliminary engineering report. Costs of application preparation are not CDBG eligible.

Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least three firms that offer the type of service the community wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required. The contract must be awarded solely on the basis of qualifications, not price.

NOTE: *If the community chooses to use the local development district for administration of the grant, the issuance of requests for statements of qualifications is not required.*

G.5.b Requests for Proposals

Requests for proposals are used when advertising is not feasible because the products or services procured are of a specialized nature or when, after advertising, no acceptable bids have been received. Approval by the State is required prior to procurement by the use of requests for proposals.

G.5.c Suggested Professional Service Contractor Evaluation Process

Once the requested statements of qualifications or proposals are received, the review process begins. The process should be thorough, uniform and well-documented. The preferred method is a review conducted by a committee of at least three people who have technical knowledge of the type of project being considered. However, these reviewers should have no potential conflicts of interest with any of the firms or individuals under review. Some criteria to consider include:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and with the complexity of the project.
- Past performance on contracts with the community and other clients, including quality of work, timeliness, and cost control.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.

Communities may also wish to establish an evaluation consideration for local firms if familiarity with local conditions is an important element for a successful project. The relative importance of these factors can be predetermined by assigning values to each (e.g., specialized experience may be assigned 40 points out of a total possible 100 points).

G.5.d Required Contract Conditions for Professional Service

A contract must be drafted with terms and conditions for all professional services contracts, including:

- Executive Order 11246 clause (7 paragraphs if contract above \$10,000, or 3 paragraphs Equal Opportunity provisions if \$10,000 or under). See, 24 C.F.R. § 1.4 and 41 C.F.R. § 60.
- Contractor's Certification regarding Equal Employment Opportunity.
- Title VI clause pertaining to the Civil Rights Act of 1964.
- Access to Records/Maintenance of Records statement.
- Conflict of Interest clause.
- Section 3 statement (written plan if contract over \$10,000) pertaining to the Housing and Urban Development Act of 1968, as amended.
- Section 109 clause of the Housing and Community Development Act of 1974, as amended.

G.5.e Required Documentation for the Professional Service Contract File

Grantees should establish a contract file and monitor the contract to assure that it is completed in a satisfactory and timely manner. The contract file must contain:

- a copy of the professional service contract;
- a list of the firms to which the request for statements of qualification was sent;
- the actual statements of qualifications received;
- a written statement explaining why/how the winner was selected.

G.6 NON-COMPETITIVE NEGOTIATION

Non-competitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive bidding or competitive negotiation procedures. This may be due to single source availability or inadequate competition, determined after solicitation of several sources. Approval by TNECD is required prior to procurement by non-competitive negotiation.

G.7 STATE CONTRACT AND COOPERATIVE AGREEMENT

When purchasing equipment local governments may be able to take advantage of either purchasing off state contract or through a cooperative agreement. Both of these methods are approved as the contracts have already been competitively procured.

G.7.a State Contract

When procuring via state contract, the grantee must provide documentation of the proposed purchase that can be found on the Active Statewide Contract list. This documentation, along with a letter from the mayor on grantee letterhead, must be submitted to ECD prior to contacting the chosen vendor. This essentially takes the place of the process of submitting both specifications and bid tabs request and award, as it is a single request and award.

Once the method of procurement by state contract is approved, the grantee may proceed with contacting the vendor. Once the grantee is ready to submit the request for purchase (bid package) to ECD for review, the following items must be included:

- Letter of recommendation signed by the mayor on grantee letterhead
- Draft purchase order with detailed equipment costs and total
- Acknowledgement Regarding Bidder SAM Registration
- Iran Divestment Act Certification (Signed by the selected vendor)
- Non-Boycott of Israel Certification

Once the approval for the purchase is received, the grantee may proceed with the purchase of agreed upon equipment.

G.7.b Cooperative Agreement

The other option of procurement is via cooperative agreement. All cooperative purchases must fully comply with T.C.A. § 12-3-1205. Cooperative agreements may only be executed with other governmental entities inside or outside of the State of Tennessee. Local governments may be a member of a purchasing cooperative, and in these cases compliance with federal, state, and local procurement policies is vitally important. If a grantee opts to purchase through cooperative, the following must be **submitted to ECD prior to contacting any chosen vendor**. This essentially takes the place of the process of submitting specifications approval request and award:

- Letter of request to use the selected service/platform signed by the mayor on grantee letterhead
- Documentation from the other governmental entity or service of the proposed equipment to be purchased
- If using a service/platform, documentation the method of procurement is compliant with the State of Tennessee (often listed somewhere on the website)
- An adopted resolution agreeing to the terms of the master agreement of the cooperative purchase service/platform

Once the method of procurement by state contract is approved, the grantee may proceed with contacting the vendor. Once the grantee is ready to submit the request for purchase (bid package) to ECD for review, the following items must be included. This essentially takes the place of the process of submitting bid tab approval request and award:

- Letter of recommendation signed by the mayor on grantee letterhead
- Draft purchase order with detailed equipment costs and total
- Acknowledgement Regarding Bidder SAM Registration
- Iran Divestment Act Certification (Signed by the selected vendor)
- Non-Boycott of Israel Certification

Once the approval for the purchase is received, the grantee may proceed with the purchase of agreed upon equipment.

G.8 PREPARATION OF A BID PACKAGE

G.8.a Initial Bid Package Preparation Considerations

The grantee should closely monitor the preparation of the bid contract documents to ensure that all necessary requirements have been met in order to avoid delays in the project.

G.8.b Wage Rate Determination

Any contract for a prime contract that exceeds \$2,000 and uses CDBG dollars for construction, is subject to the Davis–Bacon Act of 1931. This includes projects for alteration and/or repairs, and those projects must pay wage rates, fringe benefits and payments, as determined by the Davis-Bacon Act. See, 40 U.S.C. § 3142.

Without the correct wage decision in the bid contract document, the grantee will not be permitted to advertise for bids. Plan ahead and send the request in early enough for proper processing. Only classifications listed on the wage decision may be used.

NOTE: *Classifications not listed must be added by the additional classification process after contract award.*

The correct wage determination must be downloaded from the SAM.gov website at <https://sam.gov/content/wage-determinations>. Determine the correct category of construction.

NOTE: *Multiple categories of construction might rarely apply in the event that 20% or more of total construction fall under separate categories (example, building vs. heavy)*

G.9 BIDDING PROCEDURE

Once bid documents have been approved, all activities involved in the bid process may proceed. Check to assure that the following items have been appropriately covered.

G.9.a Advertising for Bids

- Solicit bids by public advertising as required by federal procurement regulations.
- Advertise at least once, 14 days prior to bid opening. Local procurement regulations must be followed if more restrictive. If a project is jointly funded, the more restrictive regulations apply.
- Note the wage rate, Section 3, and Equal Opportunity provisions in the advertisement.
- Contact minority and female contractors in the area directly by telephone or mail and document those efforts. Refer to the Equal Opportunity section of the manual and use the Minority Business Directory as a guide.
- All addenda must be sent to TNECD All contractors receiving bid documents when a revision is required prior to bid opening. This addendum must be communicated to all prospective bidders not later than 48 hours prior to the date fixed for the opening of bids.
- Call or e-mail TNECD 10 days before the bid opening. The wage decision must be verified 10 days before the bid opening and a memorandum of this verification must be maintained in the file. In the event the wage decision has been modified, an addendum must be sent to TNECD for approval prior to the bid opening as well as meet the required addendum deadline.

G.9.b Bid Opening

The bid opening is to be conducted in a business-like manner on the date scheduled.

- Requirements of the Tennessee Contractors Licensing Act of 1994 should be followed concerning information on the outside of the contractor’s bid submittal envelope.
- Bids must remain sealed until the opening.
- Log time and date of receipt, name of offeror and procurement number on each bid received.
- Keep minutes of the meeting. Read the bids aloud and determine the apparent low bidder.

G.9.c The Bid Award

After the bid opening, the proper local government officials and their consultant should review the bids. The review of all bids should include analysis of both technical and legal responsiveness. If a grantee feels it must award the contract to someone other than the lowest bidder, contact the TNECD project representative and advise him/her of the problems or questions. A letter from the project engineer and with the justification for not accepting the lowest bidder must be submitted to TNECD for approval with the recommendation for award. A letter from the community official must accompany a formal recommendation for award and indicating that the approval of the bid was made pursuant to local procurement policy.

NOTE: *If your local procurement policy indicates a governing body must vote on and approve the low/winning bidder, the letter with the recommendation for award must account for this process.*

Upon the determining the proposed awarded bidder, the grantee should do the following:

- Evaluate the bidder and their capacity to perform the services required.
- Check SAM.gov to ensure the bidder has an active registration with no exclusions.
- Send all required documentation to TNECD for review within two weeks of the bid opening, including:
 - Recommendation for Award, signed by the mayor on grantee letterhead
 - Detailed bid tabulations from all of the bidders
 - Completed Acknowledgement Regarding Bidder SAM Registration
 - Completed Certification of Equal Employment Opportunity
 - Completed Certification of Bidder Regarding use of Female/Minority Subcontractors
 - Completed Certification of Bidder Regarding Section 3 and Segregated Facilities
 - Completed Drug-Free Workplace Affidavit
 - Completed Statement of Compliance Certificate Illegal Immigrant
 - Completed Non-Boycott of Israel Certification (applicable only to contracts of \$250,000 or more or to suppliers with 10 or more employees)
 - Completed Iran Divestment Act Certification
 - Completed Non-Boycott of Israel Certification
 - Completed Certification by Proposed Subcontractor Regarding Equal Employment Opportunity (if applicable)
 - Completed Certification of Proposed Subcontractor Regarding Section 3 and Segregated Facilities (if applicable)
 - Proof of 10-day wage rate check
 - Newspaper bid advertisement
 - Minutes from the bid opening
 - Justification and attorney’s opinion if low bid not selected
 - Resolution of commitment of additional funds (if applicable)
- If any addenda are applicable to the project, documentation must also be submitted to TNECD indicating such addenda were issued to potential bidders within the required timeframe as prescribed Tennessee State law.

- Award the contract, after TNECD approval, within 60 days of the bid opening, or reject all bids. Sufficient funds must be available in the construction budget to cover the bids in order to award the contract, or a resolution of commitment of additional funds must be submitted.
- Send the Notice of Contract Award and Pre-Construction Conference (Exhibit H-1) to the appropriate TNECD representative at least ten (10) days prior to the pre-construction conference.

NOTE: *A bid shall not be awarded to any entity that does not carry an active SAM registration.*

NOTE: *A contract shall not be awarded without TNECD approval.*