MCHENRY COUNTY · IL
PLANNING & DEVELOPMENT
COMMUNITY DEVELOPMENT DIVISION

CDBG and HOME PROCUREMENT STANDARDS OVERVIEW for SUBRECIPIENT OR CONTRACTORS

The primary goal of the rules and regulations governing procurement is to ensure open and free competition for federally assisted projects. The various procurement methods outlined in this chapter all attempt to promote open and free competition for contracts. For the purposes of this Chapter, McHenry County is the Grantee. A Non-Profit Organization or municipal entity is the Subrecipient or Contractor. A for-profit business is a Contractor. The Community Development Division of the McHenry County Department of Planning and Development is considered the Division throughout this Chapter. A Responsible Party may be a business owner, chief elected official, or executive director of a Not for Profit Organization.

Open and free competition by nature mandates contracting opportunity is equal opportunity. The goal of the State CDBG Program is to ensure that small firms along with women and minority owned firms have an equal opportunity to participate in contract opportunities provided by the program. Requirements related to Section 3 and Minority and Women Business Enterprise (MBE/WBE) participation are in place to ensure this opportunity.

McHenry County Units of General Local Government (McUGLG) and McHenry County Non-Profit Organizations (McNPO) may use their own procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurement conforms to federal procurement regulations, 2 CFR Part 200.

If a community or McNPO does not have a written procurement policy, the CDBG policy must be adopted for all phases of the project. In addition, the McHenry County's Purchasing Ordinance must also be considered when establishing procurement procedures.

MCUGLGs and McNPOs should follow the stricter regulation, whether Federal, State or Local Government. The Subrecipient or Contractor shall conduct all procurement transactions in a manner providing for full and open competition and comply with all applicable federal procurement regulations (2 CFR 200, Section 200.318 through Section 200.326).

The Subrecipient or Contractor shall also follow the federal conflict of interest provisions (24 CFR 570.489(h)) and/or Illinois' Procurement Ethics and Disclosure law (30 ILCS 500/50), whichever are more stringent.

The Subrecipient or Contractor must maintain all records and source documentation related to its purchase of services, supplies, materials, property, equipment or other acquisitions. Procurement records will include rationale for the method of procurement selection of contract type, contractor selection or rejection, and basis of contract price.

The Subrecipient or Contractor shall provide the Division with executed copies of all contracts along with documentation concerning the selection process as part of the grant reporting process.

The Subrecipient or Contractor agrees to abide by the provisions of 2 CFR 200; 24 CFR 570.609; and 24 CFR 570.611, which include, but are not limited to, the following:

a. The Subrecipient or Contractor shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. The Subrecipient or Contractor shall comply with the requirements set forth in 24 CFR Part 5 concerning the use of debarred, suspended or ineligible contractors or Subrecipient or Contractors.

c. No employee, officer or agent of the Subrecipient or Contractor shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

d. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG assisted activities (Project/Scope of Work), or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG assisted activity, or with respect to the proceeds from the CDBG assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Subrecipient or Contractor, or any designated public agency.

STANDARDS AND PROCEDURES

The standards and procedures for procurement and contracting are intended to ensure that supplies, equipment, construction, and other services are obtained as efficiently and economically as possible. Solicitations must explain all the requirements that the bidder/offeror has to meet for his or her bid/offer to be evaluated by the SUBRECIPIENT OR CONTRACTOR.

Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured and cannot contain features which unduly restrict competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

• Placing unreasonable qualifying requirements on firms;

• Requiring unnecessary experience or excessive bonding;

• Specifying only brand name products, instead of allowing an equal product;

• Non-competitive pricing practices between firms or affiliated companies; and

• Non-competitive awards to consultants on retainer contracts.

Awards are to be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the SUBRECIPIENT OR CONTRACTOR, price and other factors considered. Any and all bids may be rejected when it is in the SUBRECIPIENT OR CONTRACTOR's interest to do so.

The SUBRECIPIENT OR CONTRACTOR must ensure that the award is made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration should be given to such matters as contractor integrity, compliance with public policy, record of past performance, financial capabilities, and technical capabilities.

USE OF LOCAL, SMALL, MINORITY-OWNED and/or WOMEN-OWNED BUSINESSES
Federal regulations make it very clear that SUBRECIPIENT OR CONTRACTORS should make every effort to use local business firms and contract with small, minority-owned, and women-owned businesses in the procurement process.

Specifically, the SUBRECIPIENT OR CONTRACTOR must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms. For example, the SUBRECIPIENT OR CONTRACTOR should:

• Incorporate such businesses in solicitation lists whenever they are potential sources;

• Ensure that such businesses are solicited when identified as potential sources;

• Divide procurement requirements, when economically feasible, to permit maximum participation of such businesses; and

• Require prime contractors, when subcontracts are let, to take affirmative steps to select such firms.

USE OF SECTION 3 BUSINESSES

In conformance with requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, the SUBRECIPIENT OR CONTRACTOR must award contracts for work to be performed to eligible businesses located in or owned by residents of the distribution area to ensure that employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing.

DEBARRED & INELIGIBLE CONTRACTORS

The SUBRECIPIENT OR CONTRACTOR must ensure that awards are not made to any party which is debarred or suspended, or is otherwise excluded from or ineligible for, participation in federal assistance programs under Executive Order 12549 “Debarment and Suspension" SUBRECIPIENT OR CONTRACTOR must check the status of all contractors and subcontractors on the System for Award Management (SAM) at https://sam.gov/content/exclusions Please note that a Debarred contractor or subcontractor is also referred to as an Excluded one.

EXCEPTION FOR ACTIVITY DELIVERY CONTRACTS

As outlined under 2 CFR 200.318(e), to foster greater economy and efficiency and to promote the cost-effective use of shared services across the Federal government, the SUBRECIPIENT OR CONTRACTOR receiving CDBG funds may procure its sub-grant’s Activity Delivery services from an intergovernmental agreement organization, such as a regional planning commission (RPC), or a governmental-private sector inter-entity agreement organization, such as a regional economic development corporation (EDC), without regard to the competitive procurement provisions outlined in 2 CFR 200.320.

A primary function of regional planning commissions and of regional economic development corporations is to assist units of local government, under the oversight and control, or partial control, of elected officials from the member units of local government. The public purpose served by regional planning commissions and regional economic development corporations, combined with the local control of each, lends itself to protection equal to those contemplated by the competitive provisions of 2 CFR 200.320. However, nothing prevents any SUBRECIPIENT OR CONTRACTOR from complying with the provisions of Subpart 320 when procuring administrative services if the SUBRECIPIENT OR CONTRACTOR deems compliance to be equitable and in their best interest.

CONFLICTS OF INTEREST

Recipients must avoid conflicts of interest. In the procurement of property and services, 2 CFR 200.319 regarding conflicts of interest apply. In all cases not governed by those rules, conflicts of interest are not permitted. If a person is an employee, agent, consultant, elected official or appointed official of a recipient or Subrecipient or Contractor of CDBG funds and has project-related responsibilities or access to inside information, he or she may not obtain a financial benefit or interest from the project for himself or herself or those with whom he or she has family or business ties during his or her tenure or for one year thereafter.

SELECTION

The lowest, most responsible and responsive bidder must be selected to provide the required supplies, equipment, or services, with the exception of engineering and architectural services.

Only A/E professional services may use factors other than price as a selection factor. Responsive refers to a valid and correct bid. Examples of responsiveness include bids turned in prior to the deadline, bid forms filled out correctly, bids containing all required information (bonds), etc. SUBRECIPIENT OR CONTRACTORs may discard a non-responsive construction bid.

Responsible refers to financial standing, skill, facilities, capacity, experience, previous work record, or any default within the last 12-month period. Discarding a construction contractor solely based upon the factors of "responsibility" demands much more documentation and requires the written recommendation of the SUBRECIPIENT OR CONTRACTOR's own attorney.

PROCUREMENT METHODS

2 CFR Part 200 allows five methods of procurement: micro-purchase, small purchase, competitive sealed bids, procurement by competitive proposals, and procurement by noncompetitive proposals. Each of these methods is described below. Again, if the SUBRECIPIENT OR CONTRACTOR has written procurement procedures or if a State statute applies, the stricter method shall be followed.

1. Micro-Purchase Procurement by micro-purchase is the procurement of supplies or services of which the aggregate dollar amount does not exceed $3,000 (or $2,000 in the case of procurement for construction, subject to the Davis-Bacon Act). To the extent practicable, the Subrecipient or Contractor must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Subrecipient or Contractor considers the price to be reasonable.

2. Small Purchase This method of procurement may be used for the procurement of services, supplies, and/or other property that has an estimated dollar value less than the threshold limits and restrictions determined by 2 CFR Part 200, State or Local statutes. The Small Purchases Method of procurement may not be used for professional services such as Architectural, Engineering, Grant Administration, etc.

Step 1: Determine Threshold. The MCUGLG must determine whether or not the estimated dollar amount of the product or service being procured is equal to or less than the applicable bidding limit. If the estimated amount is equal to or less than the amount prescribed, go to Step 2. If the estimated amount will exceed the prescribed limit, use another method of procurement.

Step 2: Prepare Solicitation for Products/Services By email, letter or fax, at least three vendors must be contacted for competitive quotes. There is no requirement to contact MBE/WBE providers. At least seven days must be allowed for responses. The SUBRECIPIENT OR CONTRACTOR should be specific in describing the product or service being requested.

Step 3: Document Responses. All responses should be documented and records maintained. Verbal quotes are not valid.

Step 4: Make Vendor Selection. If the vendor with the lowest quote is not selected, the SUBRECIPIENT OR CONTRACTOR must document the justification as to why another vendor was selected. Issues such as poor past performance or bad references are typical reasons for selection denial. The SUBRECIPIENT OR CONTRACTOR's legal counsel should be (but is not required to be) consulted on all procurements awarded to vendors not having the lowest quote.

Step 5: Execution of Contract(s). The SUBRECIPIENT OR CONTRACTOR may execute contracts with the successful vendor after they have received the Environmental Release Letter from the State. If the SUBRECIPIENT OR CONTRACTOR only receives one quote, the consulting Engineer, Responsible Party, or Architect must validate that the price is reasonable. For record keeping purposes, a cost analysis must be performed. Making several separate small purchases from the same vendor or different vendors in order to stay under the formal bidding threshold is prohibited.

3. Competitive Sealed Bids - The Competitive Sealed Bid method is also referred to as an Invitation for Bid (IFB). This method of procurement is much more formal than the others and does not allow for negotiation. It is the required procurement method for all CDBG construction work.

Step 1: Prepare Invitation for Bid (IFB). The Subrecipient or Contractor must develop an IFB that clearly identifies the services required including: all technical specifications required, any other requirements that apply to the contract, and instructions for preparing and submitting a bid. Bid specifications may not identify a specific name brand or provider except if required to identify a piece of equipment necessary for completion of

the project. In this instance, the name brand or provider must be followed with the terminology, ‘or approved equals’.

Bid specifications are prepared by the professional services provider, either an Architect or Engineer and must include all parts of the project scope as outlined in the Grant Agreement. It is the responsibility of the SUBRECIPIENT OR CONTRACTOR to provide the bid specifications preparer with a copy of the Federal Construction Contract Provisions and the Davis Bacon Wage Decision if applicable to the project.

The bid specifications must include a statement that the Wage Decision is subject to change and the one that is in effect on the date of the bid opening will be applicable to the total project if the contract is awarded within 90 days of bid opening. If not, the applicable Wage Decision becomes the one that is in effect on the date that contracts are signed.

Step 2: Publish Invitation for Bid (IFB). The IFB must be published at least twice in a newspaper of general circulation, at least seven days apart. The last advertisement must be published at least seven days prior to the bid opening date. The IFB must state the date, time and location for submission of bids. The legal advertisement must provide information pertaining to where the project plans and specifications may be obtained or reviewed.

In order to obtain the highest level of free and open competition, publishing the IFB in well-known trade journals and/or sending a copy of the IFB to the area’s local contractors may increase the number of responses received.

Step 3: Solicit MBE/WBE Responses, which may be completed through the IFB and through direct communications.

Step 4: Receive Bids. As bid packets arrive, the time and date the bid was received from the vendor is written on the outside of the bid packet. Any bid received after the date and time due must be rejected and returned to submitter unopened.

Step 5: Open Bids. Bids must be opened and read aloud at a public meeting, at the date, time and location stated in the legal advertisement. The bidder’s name and amount of bid must be read and recorded in the minutes of the bid opening meeting. No action should be taken at the bid opening meeting except by order of the Responsible Party to take the bids under advisement. Bid opening meeting minutes and a sign in sheet of all attendees must be maintained for the project records. If all bids exceed the amount budgeted for construction costs, the SUBRECIPIENT OR CONTRACTOR has only two options. The local (or contractor or agency) funds budget may be increased to cover the additional costs or all bids may be rejected and the Responsible Party shall instruct the Architect, staff, or Engineer to revise bid specifications and rebid the project in an attempt to bring costs to within the project budget. The project may not be altered or changed to eliminate any part of the original project scope.

Step 6: Make Vendor Selection. The Competitive Sealed Bid Method of procurement requires that the construction contract be awarded to the lowest bidder, provided that the lowest bidder is found to be a responsive and responsible bidder. If the bids received are within the project budget, the Architect, Responsible Party, or Engineer will review all bid packages to determine if each one is responsive and responsible and the Subrecipient or Contractor's legal counsel will verify that the bonding and certification requirements outlined in the bid specifications have been included.

Upon completion of these reviews, the Architect or Engineer will prepare a bid tabulation sheet and a written statement to the SUBRECIPIENT OR CONTRACTOR making a recommendation of the lowest responsive and responsible bidder. The bid tabulation must be certified (stamped) by the project Architect or Engineer (if applicable). If the low bidder is found to be unresponsive or irresponsible and is not recommended by the project Architect or Engineer, the SUBRECIPIENT OR CONTRACTOR's legal counsel should be consulted prior to making the determination to reject the lowest bid and consider the second lowest bidder. A written legal opinion must accompany all procurement documents where the low bidder was not selected in case of a formal bid protest or possible litigation.

Step 7: All unsuccessful bidders must be notified in writing if not documented as present at the bid opening.

Step 8: Award Construction Contract. When the Subrecipient or Contractor has received the Architect or Engineer's recommendation for award and certified bid tabulation, the SUBRECIPIENT OR CONTRACTOR may award a firm, fixed price contract to the recommended bidder.

4. Procurement by Competitive Proposals (Request for Proposals (RFP's)/Request for Qualifications (RFQ's) Competitive Proposals are generally used when sealed bids are not appropriate. The Competitive Proposal process is most typically used for the procurement of professional services, including, but not limited to administration, architecture, engineering, asbestos inspection, demolition inspection, and title search services.

When procuring the services of a licensed Architect or Engineer, and these services are to be paid for using federal funds, the SUBRECIPIENT OR CONTRACTOR should develop and distribute to a number of companies, a Request for Qualifications (RFQ) that may utilize the Architectural or Engineering Industries' Qualification Based Selection (QBS) procedures. All RFPs and RFQs received must be evaluated. A written method for evaluation, which includes the significant factors used to determine the contract selection award, must be prepared and publicized along with the Request.

Step 1: Prepare RFP/RFQ. The Subrecipient or Contractor must prepare a Request for Proposal or Request for Qualifications.

Step 2: Solicit Responses. Send the RFP/RFQ to at least five vendors.

Step 3: Publish RFP. The Subrecipient or Contractor must advertise the RFP at least once in a newspaper of general circulation. A formal legal advertisement is required. Proposals are due no sooner than 15 days following the date of publication of the legal advertisement; OR Publish RFQ. The Subrecipient or Contractor must publish the RFQ at least once in a newspaper of general circulation a minimum of 30 days prior to the RFQ submission due date. A formal legal advertisement is required.

Step 4: Establish Evaluation Committee. Appoint an evaluation team of knowledgeable members (town council, board of public works members, etc.) and develop an evaluation plan to rank respondents and provide guidance during the selection process. Typically three to five people make up the Evaluation Committee. At least one of the committee members must be the Responsible Party.

Step 5: Open Responses. Responses must be received at the address stated in the legal advertisement, logged in and stamped with the date and time received prior to being opened and submitted to the Evaluation Committee for review. Any response not received by the date and time stated in the legal advertisement must be returned, unopened to the submitter.

Step 6: Short List Vendors. The purpose of the evaluation process is to select the responders whose proposals meet all of the criteria required in the solicitation. The committee must select two or more of the responders for interviews.

Step 7: Conduct Interviews. A best practice of a SUBRECIPIENT OR CONTRACTOR is required to contact the firms selected, in writing with the time, date and location of the interview. The SUBRECIPIENT OR CONTRACTOR must also notify those who will not be interviewed. On occasion, the SUBRECIPIENT OR CONTRACTOR may receive only one proposal. That respondent must be interviewed before the scoring committee. The interview may be conducted via conference call.

Step 8: Make Vendor Selection. Each member of the Evaluation Committee must complete an Interview Evaluation and Score Sheet for each vendor short listed. Each scorer must use the same scoring and weighting criteria making their best effort to score each proposal fairly and without bias. The score sheets must be signed by each member of the Evaluation Committee and maintained in the project file. Following the Evaluation Committee's review, the vendor whose proposal is determined to be the most advantageous to the project, based upon qualifications, price (if applicable) and other factors may be selected.

If utilizing QBS Procedures, the vendor with the highest number of aggregate points should be selected for price negotiations. If unable to reach an agreement on the fees to be charged for the services required, the Statement of Qualifications may be rejected and the vendor with the second highest number of aggregate points may be approached for price negotiations. This process may continue until an agreement is reached, so long as the vendor selected is capable of providing the requested services based upon quality and other relevant factors.

Step 9: Notify Successful and Unsuccessful Proposer(s). The SUBRECIPIENT OR CONTRACTOR must notify all successful and unsuccessful vendors, in writing. Step 10: Execution of Contract. The SUBRECIPIENT OR CONTRACTOR may execute contracts with the successful vendor.

5. Procurement by Noncompetitive Proposals This method of procurement is used to solicit products or services from a single source and may only be used when the other three methods of procurement are not applicable. Generally, the State does not allow Procurement by Noncompetitive Proposals. The stipulations that would exclude the other methods of procurement include the following:

• The item or service can only be obtained from one source.

• A condition of public emergency or urgency exists and time does not permit the use of a competitive procurement method.

• Following solicitation of a number of service providers, competition was deemed to be inadequate.

• The Division expressly authorizes.

• Noncompetitive and Sole Source procurement is discouraged and must be well documented to avoid disallowance.

Step 1: Justification for Use of Method. The SUBRECIPIENT OR CONTRACTOR must prepare a written justification as to why this method of procurement is being utilized and allow the State to review this justification prior to proceeding to Step 2.

Step 2: Specification of Products/Services. Prepare a specific list of products or services to be acquired along with a cost price analysis that evaluates specific elements of cost and proposed profit.

Step 3: Verify Data. A licensed Architect or Engineer must verify the SUBRECIPIENT OR CONTRACTOR's data to certify the specifications and reasonableness of the estimated costs.

Step 4: Specification of Products/Services. The vendor should be provided with a specific listing of products or services required.

Step 5: Evaluate Bid. The bid is evaluated based upon responsiveness and price reasonability. For this method of procurement, the SUBRECIPIENT OR CONTRACTOR may negotiate with the vendor to assure the most advantageous offer is acquired.

Step 6: Execution of Contract. The Subrecipient or Contractor may execute contracts with the successful vendor, if desirable to do so.

BONDING AND INSURANCE

2 CFR Part 200 specifies bonding and insurance requirements for federally supported activities. In carrying out CDBG activities (except professional services contracts), CDBG recipients must establish bonding and insurance requirements that ensure completion of CDBG funded construction contracts in the event of contractor or subcontractor default.

For contracts exceeding $25,000, recipients must require a bid guarantee from each bidder equivalent to 5% of the bid price. This may be secured through a bid bond or a certified check. Any contract with an amount over $25,000 is required to produce documentation of performance bonding within two weeks of contract award. The contractor will obtain a performance bond for 100% of the contract price to ensure completion of the contract. Any contract with an amount over $50,000 requires the contractor to produce documentation of a payment bond for 100% of the contract price to ensure payment to all persons supplying labor and materials.

In the event of the surety performing under a takeover agreement, the bonding company must produce evidence of participation. Subrecipient or Contractors are free to use their requirements relating to bid guarantees, performance bonds, and payment bonds for contracts of $25,000 or less in value.

An irrevocable letter of credit from a federally insured financial institution may be used for contracts of less than $25,000. The irrevocable letter of credit cannot have an expiration date and must remain in effect for the duration of the federally funded project.

RECORDS AND FILES

The SUBRECIPIENT OR CONTRACTOR shall maintain records to detail the significant history of a procurement and contracting and monitor the contracts to assure that the contracts are completed in a satisfactory and timely manner. The Procurement and Contracting files must contain:

• Description of method used to select consultants and contractors

• Request for Bids (RFB), Request of Qualifications (RFQ) and Request of Proposals (RFP) documents including advertisements, correspondence, and bids/qualifications/ proposals received evaluation method(s)

• Cost and pricing data

• Record of the approval by the governing body of the bid/qualifications/proposal accepted/selected

• Contract(s) for services

• Records of partial payments and supporting documentation (in financial management files)

- Contract amendments (if any) and rationale for the amendment
- Procurement Policy
- Conflict of Interest disclosure documents and records/Exemption Request documentation (if applicable)
- Evidence of debarment search