

## **How to Procure Professional Services**

The federal requirements applicable in securing contract services [engineering, consulting and other professional services, and construction and supplier services] are located at 2 CFR Part 200.318-200.326.

A *procurement policy* must be written and adopted prior to securing contract services. If a procurement policy is already in place, the grantee must determine whether it includes all federal requirements contained in 2 CFR 200.318-200.326, and otherwise conforms to the Federal procurement standards. If the policy does not contain all federal requirements (and the grantee intends to use LCDBG funds to pay for such services), the policy must be amended accordingly.

The grantee's procurement policy must address the following: A code of conduct that prohibits elected officials, staff, or agents from personally benefiting from LCDBG procurement must be included. The policy should prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors. Sanctions or penalties for violations of the code of conduct by either grantee officials, staff or agents, or by contractors or their agents must be identified [2 CFR 200.318 (c)(1)]. The procurement policy can be specific to the municipality. The needs of a Village are different from a City or a Parish.

Proposed procurements must be reviewed by staff to avoid unnecessary and duplicative purchases. Also, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. [2 CFR 200.318 (d)]. Affirmative efforts must be undertaken to hire women's business enterprises, minority firms and labor surplus firms, both by the grantee and the project's prime contractor [2 CFR 200.321].

The method of contracting outlined in the policy should be acceptable (fixed price, cost plus fixed fee, purchase orders, etc.). Cost plus a percentage of cost contracting must be specifically prohibited if federal [LCDBG] funds are involved [2 CFR 200.323]. Procedures to handle and resolve disputes relating to procurement actions of the grantee must be included [2 CFR 200.318 (k)].

### **Full and Open Competition**

All procurement transactions, regardless of dollar amount, must be conducted to provide "full and open competition" [2 CFR 200.319]. Some of the situations considered to be restrictive of competition include, but are not limited to:

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

Federal procurement guidance considers a form of agreement for general, unspecified work, entered into in advance of work to be done as a "retainer contract". A retainer relationship can exist when a potential contractor is available when the client needs services during a specific time period, but without a specified delivery of services.

Since 2015, the Federal grant procurement regulations regarding full and open competition in procurement actions (2 CFR 200.319(b)) states;

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.

The federal authorities that review procurement actions of federal grant recipients take the view that full and open competition increases the probability of reasonable pricing from the most qualified contractors and helps discourage and prevent favoritism, collusion, fraud, waste, and mismanagement of Federal funds. Receipt of less than two offers, proposals, bids or qualified responses to a solicitation does not meet the requirements of “full and open competition”; and any contract award otherwise would be subject to a finding to disallow the costs.

A solicitation that just follows the minimum State or local requirements for publicizing solicitations and which fails to obtain two or more qualified responses will not be considered sufficiently publicized under the Federal procurement regulations and guidance. Federal procurement guidance states that a solicitation must be run for a period sufficient to achieve effective competition. What constitutes “sufficient time” may vary depending on the nature of the procurement. The State bid law provides that the “first advertisement shall appear at least twenty-five days before the opening of bids...”, it does not prohibit a longer advertisement period if that is what it takes to achieve effective competition. A determination of a solicitation being sufficiently publicized would also consider the media utilized for the solicitation. The State bid law requires a public works solicitation “be published ... in a newspaper in the locality”, but it also encourages “... a public entity may also publish an advertisement by electronic media available to the general public.” Advertising in a local newspaper whose circulation area does not provide an appropriate number of qualified firms or sources in the circulation area will not be deemed sufficiently publicized. The federal procurement regulations do not specify how many newspapers must carry the advertisements, but grantees will typically publish an Invitation for Bids (IFB) in one or more newspapers with distribution across the State or parish as the case may be. Some Grantees take this one step further by including the IFB in trade journals, community newspapers and newsletters.

Methods of procurement to be followed when purchasing materials and supplies or contracting for services must be included [2 CFR 200.320]. Conflicts of interest in the award and/or administration of contracts must be avoided.

“No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.” (2 CFR 200.318 (c)(1))

Other federal regulations with which the grantee must comply are the conflict of interest requirements in 24 CFR 570.611. Conflicts of interest may be governed also by state law (State’s “Code of Governmental Ethics”) or local law or ordinance. Policy and records. The federal procurement regulations require that the grantee document rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price for all procurement transactions in adherence to its procurement policy.

**Competitive Proposals.** Unlike sealed bidding, the competitive proposal method permits: consideration of technical factors [or “qualitative” or “non-cost” factors] other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the grantee, considering price and other factors, e.g., technical expertise, demonstrated performance, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price. Generally, the competitive proposals method should be used whenever any of the following conditions exist:

1. The requirement cannot be described specifically enough to permit the use of sealed bidding. In other words, the work is not definite enough to accurately estimate the total cost of the contract. Therefore, the contractor would have to build monetary contingencies into his/her price to ensure that his/her costs were covered. The grantee, in turn, would end up paying for the increase in price due to the contingency costs.
2. The nature of the requirement is such that the grantee needs to evaluate more than just price to be sure that the prospective contractor understands the grantee’s needs and can successfully complete the contract, especially when contracting for professional services (e.g., legal, architect, engineer, accounting, etc.) where the grantee needs specific expertise and experience.
3. The requested work lends itself to different approaches, e.g., proposals.

**Noncompetitive Proposals** – Use only under the following conditions:

1. The Office of Community Development expressly authorizes noncompetitive proposals in response to a written request from the grantee;
2. The item is available only from a single source;
3. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
4. After solicitation of a number of sources, competition is determined inadequate. If the solicitation method used results in the grantee receiving only one offer/proposal the grantee must contact OCD for further instructions.

HUD’s guidance on the last item above assumes the Grantee has undertaken other procurement methods and has requested proposals or bids from multiple sources. If the Grantee determines that the competition was *inadequate*, it is most likely because the Grantee issued an RFP at least two times and received:

- A single response from the same provider in each and every occasion that proposals were submitted
- No responses

It will be important for the grantee to document its justification for why there is inadequate competition. Federal agencies do not consider competition inadequate where a grantee did not sufficiently publicize the requirement, solicited only a few sources that chose not to submit a proposal, set unduly restrictive specifications, took arbitrary actions, or failed to take other actions that resulted in the inadequate competition. In those cases, adequate competition may be possible, but the grantee failed to take the proper steps and actions to ensure such competition. Poor planning or lack of planning, such as too short a solicitation time, is **not** justification for emergency or sole-source procurements. A grantee’s contention that a public exigency or

emergency will not automatically be accepted. Before OCD can approve moving forward with a noncompetitive award, without revising or cancelling the solicitation and re-soliciting offers or bids, OCD must review the documentation. As per the federal procurement guidance, a written justification for a non-competitive procurement must be provided.

**TYPES OF CONTRACTS** The federal procurement regulations identify three general types of contracts that may be used for contracting with private parties. They are; **fixed –price, cost reimbursement** and **time and materials**. The type of contract appropriate for a competitive proposal is a cost reimbursement.

### **Cost-Reimbursement**

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the grantee. Unlike a fixed price contract, the contractor may not necessarily receive the total amount of the cost ceiling. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. A cost-reimbursement contract may be used only when: the contractor's accounting system is adequate for determining costs applicable to the contract; and, appropriate surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

**CONTRACT PRICES** Below are descriptions of four different categories of prices. The types of prices are closely associated with types of contracts; **Lump Sum** and/or **Unit Price** with specified quantity for a Fixed Price contract. A Cost-Reimbursement contract may have Lump sum or Unit Price components in addition to and **Billable Hours** and/or **Reimbursable Costs**.

### **Lump Sum Price**

For definable work product or deliverable, whose value can be expressed as a single price inclusive of all production costs [labor, materials and purchased service costs, allowable overhead and profit]. The contractor will bear all the risks in producing the work product or deliverable at the agreed upon price. Because of the presumed certainty of contract task or item performance that qualifies a contract task or item as a Lump Sum price no adjustments to contract price are permitted. For fixed price contracts no change in quantities for any Lump Sum task(s) or item(s) would be permitted. Payment of total contract price will be made upon satisfactory performance, delivery and final acceptance of contract task(s) or item(s).

### **Unit Price**

For definable work products or deliverables whose value can be expressed as a single price inclusive of all production costs [labor, materials and purchased service costs, allowable overhead and profit] for contract tasks or items and will be needed in two more iterations at the same agreed upon price. The contractor agrees to bear all the risks and cost variance in producing or performing the contract tasks or items at the agreed upon price per unit and for the quantities specified. For fixed price contracts, no change in quantities are permitted.

### **Billable Hours**

For work efforts that are composed of preponderantly personnel compensation costs with a minimum of outside purchases of materials and services needed to produce a work product or

provide a service; the contractor will be reimbursed for applied work efforts at the agreed upon billable hourly rate(s) inclusive of direct labor compensation, overhead, general and administrative expenses, and profit [fully burdened] by job title.

### **Reimbursable Costs**

For work, efforts that require significant outside purchases of materials, services or from subcontractors in addition to the contractor's personnel compensation costs needed to produce a work product or service. The contractor's personnel compensation costs will be reimbursed for applied work efforts at the agreed upon hourly rate(s) by job title. The contractor's itemized outside purchases of materials and services will be reimbursed at invoice cost identifying items by quantities and/or cost per unit.

### **Competitive Proposals**

The first step in procuring professional services is for the grantee to determine what grantee management tasks it can perform considering its own capability in the particular area and what tasks will have to be contracted out (2 CFR 200.459(b)(2)). The “Administrative Cost Reasonableness” spreadsheet on OCD’s website has a comprehensive listing of program tasks to be performed. After selecting, the tasks to be contracted out you can develop a scope of services for your solicitation. It is important to note that the federal procurement regulations [2 CFR 200.319(a)] require that consultants who “... develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals **must be excluded** from competing for such procurements.” This prohibition is also reflected in State law [R.S.39:1603.A.]

“Any person contracting with an agency for the purposes of developing bidding documents, requests for proposals, or any other type of solicitation related to a specific procurement **shall be prohibited** from bidding, proposing, or otherwise competing for award of that procurement. Such persons shall further be prohibited from participating as subcontractors related to the award of that procurement.”

The next step is to select the appropriate procurement method; because of the performance uncertainties involved, a fixed price method is not appropriate (2 CFR 200.320(d) therefore the competitive proposal method will be used. This method allows for evaluating more than just price; to consider qualitative factors as well. The grantee must decide what qualitative factors to assess in its selection process. Federal funding agencies do not require any specific evaluation factors or analytic process, but the evaluation factors must support the purposes of the grant. When using the competitive proposal method, the federal procurement guidance requires “consideration of one or more non-cost evaluation factors”. Qualitative factors that can be considered are offeror’s/proposer’s qualifications, capabilities, experience, past performance and offerors/proposer’s approach to the project.

The grantee will next decide how to evaluate the non-cost qualitative factors; either as **threshold requirements** or **competitive factors**. Qualification thresholds are minimum qualifications that **all** proposers/offerors must have in order to compete but **are not** competitively ranked. Competitive (scoring) criteria are items that will be evaluated, compared and ranked among the proposals/offers. Competitive (scoring) criteria must support meaningful comparison and discrimination between and among competing proposals/offers. Selecting evaluation criteria can be more of art than a science. The grantee must then decide how much weight to assign to the competitive criteria and what scoring method is most effective in making that determination

While competitive proposals typically gives lesser consideration to price/cost in the scoring system; the federal guidance provides that price/ cost when combined with the non-cost evaluation factors can be significantly more important, approximately equal, or significantly less important than the qualitative factors. When considering the weighting the grantee should assess how likely the non-cost factors will distinguish the different proposers among them.

A rating scale for qualitative factors should be developed that encourages reviewers to make the finest discriminations they can accurately evaluate. The rating scale should be defined that larger scale values represent greater degrees of merit and smaller values represent smaller degrees. The scale should include an appropriate number of scale positions to permit reliable differentiations among proposers. If there are too many increments on the scale, the differences between increments may not be reliable or meaningful. If there are too few increments, the differences will not be apparent.

Developing evaluation criteria. The federal procurement theory operates on the principle that the best value may not always be the lowest cost; analysis of qualitative factors may establish additional value that a simple price comparison may not. This analysis is called the “Continuum of Value” and is explained further below. The recipient must next make a selection of the appropriate evaluation factors. As part of the procurement planning process, the recipient must have a written evaluation method of conducting an evaluation. At a minimum the written plan must identify the five components of each evaluation factor selected.

The competitive proposal evaluation process can be either simple (one-step) or extensive (two-step). An extensive process (two-step) will include a pre-proposal conference and conducting an initial selection review by establishing a predetermined competitive range of points for proposals that would be considered to qualify for the job. All firms whose proposals scored within that range would be invited to an oral interview and asked to submit a “best and final offer”. Proposals not in the competitive range, shall be eliminated from further consideration for award. The remaining proposals would then be re-evaluated and the highest scoring firm would be chosen. In the simplified process (one step), the grantee would evaluate the proposal(s) according to the publicized selection criteria and award the contract to the proposal which is the most advantageous to the program, with price and other factors considered. The simplified method (one step) is recommended in situations where the purchase requirements are repeat or familiar; the project goals or objectives are well defined, the contract tasks can be specified, the proposer’s particular performance approach is less important, the evaluation of the qualitative factors can be accomplished by thresholds rather than competitive ranking and price/cost will be a significant factor because of the minimal differentiation in the qualitative factors offered by the various proposals. The extensive (two-step) method is recommended in situations where the purchase requirements are new or unfamiliar; the project goals or objectives are general, the contract tasks are proposed by the proposer and negotiated, the particular performance approach is very important, the evaluation of the qualitative factors will be accomplished mostly by competitive ranking and price/cost will be a lesser factor because of the extensive evaluation of the qualitative factors. The evaluation process chosen must be identified in the solicitation, and the procedure cannot be changed once the procurement process is initiated. If the extensive (two-step) evaluation process is used, the solicitation must identify the date of the pre-proposal meeting and the projected date of the oral interviews. The competitive proposal process. Begin by publicizing the Request for Proposals (RFPs) and/or Qualification Statements (RFQs). The RFP is used when price is a factor in the selection process and the RFQ is used when price is considered after the firm has been selected. To assure “proposals will be solicited from an

adequate number of qualified sources” as required in the federal regulations at 2 CFR 200.320 (d)(2), the grantee should:

- Advertise the solicitation in a general circulation newspaper and/or the grantee’s nearest metropolitan statistical area newspaper. A general circulation newspaper is a newspaper that publishes at least six days a week and have a paid circulation of over 10,000.
- Post the solicitation on the grantee’s website if available or on a commercial website.
- Do direct solicitation by mailing a copy of the request for proposals to several firms that provide administrative services. As CDBG for a list of administrative consulting firms or engineering firms. We ask that you direct solicit a minimum of 10 firms for each procurement.

The grantee may do one or all three of the solicitation methods above. In order to avoid the procurement from being classified as “noncompetitive” the grantee must obtain at least two or more responsive offers/proposals. “Adequate” competition for competitive proposals is judged on the number offers/proposals received, not the particulars of the solicitation process. There is no minimum required time period for competitive proposal solicitations. The solicitation must run for a period sufficient to achieve effective competition. Grantees must give ample time for the RFP to circulate and for proponents to assemble their submission – an RFP/RFQ that anticipates more detailed, collaborative, and lengthy proposals needs to make sure that the RFP/RFQ allows sufficient time to solicit proposals from an adequate number of qualified sources.

The adequacy and detail of the SOW (statement or scope of work) may affect the number of offerors who are willing and able to respond. If the SOW is not specific enough, some may not respond, either because of uncertainty about the risks involved or because they may not understand the relationship of the requirement to their own particular capabilities.

The solicitation should state:

- The city/parish is applying for or has been awarded an LCDBG grant;
- The type of professional service(s) that is being solicited;
- The location and time where the scope of services, selection criteria, minimum requirements, etc., can be obtained; and
- The deadline for the submittal of the proposal or qualification statements.
- The solicitation cannot require one firm to provide both administrative and engineering services. However, the same firm may be procured for both services. In this case, both procurements must occur concurrently.

The following information must be provided to all parties that responded to the solicitation (and/or mailing):

- A cover letter from the grantee signed by the chief elected official;
- Scope of services;
- Name and phone number of grantee’s contact person;
- Deadline and location for submittal of proposal and/or qualification statements;
- Selection criteria and corresponding point system that will be used to rate the proposals or qualification statements received; and
- A statement that the amount of funds available for the contract will be subject to LCDBG restrictions and approval.

- An evaluation process of the proposals and/or qualification statements received is required to determine whether the selection criteria and requirements are met.

For all evaluation criteria the solicitation should clearly, state what proposers must submit for evaluation; do not leave the proposers to decide what information or materials to submit in response to the proposal.

The Scope of Work (SOW) must be clear and specific. The adequacy and detail of the SOW may affect the number of proposers who are willing and able to respond. If the SOW is not specific enough, some may not respond, either because of uncertainty about the risks involved or because they may not understand the relationship of the requirement to their own particular capabilities.

Please note that receipt of just one proposal and/or qualification statement requires an evaluation. It is recommended that the grantee organize a committee of several people with knowledge of the LCDBG project, keeping in mind the Conflict of Interest rules. Request for Proposals (RFPs) RFPs are used to procure professional services except for the services of an engineering firm or architectural firm when using the competitive negotiation method. An RFP must be prepared detailing the type of services needed and listing the selection criteria against which all-responding proposals will be evaluated. Cost must be one of the selection criteria used and will be a significant factor if the simplified evaluation method is used or be a lesser amount of the total possible points when the extensive evaluation method is used. Geographical preference may not be a criterion in accordance with federal regulations. Please note: A firm may include in their RFP the experience and background of other firms when a written contractual agreement exists between firms as a partnership or as a subcontractor with a specific list the services to be provided as a subcontractor; and the solicitation issued specifically provides for this option.

Qualification statements are used to procure engineering or architectural services, using method Request for Qualifications (RFQ). While the federal procurement regulations provide that local governments may use RFPs with price as a consideration for design professional services, State law (R.S. 38:2318.1 A.) prohibits price or price related considerations as a selection factor. Qualification statements cannot be used to procure any other service (2 CFR 200.320(d) (5)). Engineering and architectural firms may be procured for administrative tasks, but the RFP procedure must be utilized to procure administrative services. A selection is made based on the competitors' qualifications, subject to negotiation of fair and reasonable compensation. The qualification statements must be evaluated by the selection criteria identified in the request. The grantee should negotiate costs with the top ranked firm.

**As part of the Office of Community Developments' (OCD) continued efforts to improve the Request for Proposal (RFP)/Request for Qualifications (RFQ) process, OCD must review and approve all solicitations before they are issued to insure all the federal regulations and guidance are properly implemented.**

### **Prequalified Lists**

Grant recipients may use prequalified lists of persons, firms, and products when purchasing under a federally assisted award. These prequalified lists, however, are not contracts. They are tools to aid in the procurement of future requirements by allowing grant recipients to review the qualifications of prospective contractors prior to a project solicitation or a contract award. The federal guidance set forth the following two requirements that non-state entities must meet when using such a list:



- First, they must ensure that all prequalified lists are current [generally not more than four years old] and include enough qualified sources to ensure maximum full and open competition.
- Second, they must not exclude potential bidders or offerors/proposers from qualifying during the solicitation period.

Since prequalified lists are not contracts, non-state entities must still comply with all of the other applicable federal procurement under grant rules when awarding a contract. While a non-state entity may submit a solicitation directly to those contractors identified on a prequalified list, they must also publicly issue the solicitation pursuant to the applicable federal rules. They must also allow any additional interested contractors to submit their qualifications and, if deemed qualified, submit their bids or proposals in response to the solicitation. The solicitation, evaluation, and subsequent award of a contract or contracts must also conform to the federal procurement standards at 2 C.F.R. §§ 200.317-200.327.

### **ALLOWABLE COSTS**

Cost Reasonableness is a component of Allowable Costs and can be determined through price or cost analysis. According to HUD's *Cost Price Guide*:

#### **What is price analysis?**

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements that it is composed of.

#### **What is cost analysis?**

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directed related to the requirement and ultimately, reasonable.

Normally, competition establishes price reasonableness. Where there is minimal or no price competition to tell you if the price or estimated cost is reasonable, the grantee must obtain a breakdown of the proposed costs and perform a cost analysis. A cost analysis requires that the proposers submit cost proposals that show the elements (e.g., labor, materials, overhead, profit etc.) of their proposed costs or price. The *Cost Reasonableness Forms* for both consultants and engineers are found at [https://www.doa.la.gov/Pages/ocd/cdbg/about\\_lcdbg.aspx](https://www.doa.la.gov/Pages/ocd/cdbg/about_lcdbg.aspx) and can be used to meet this requirement. Generally, administrative contracts are cost reimbursement contracts (cost plus fixed fee) where the firm is paid on the basis of costs incurred, overhead, other direct costs, and a fixed fee. Basic engineering and design contracts are generally cost reimbursement contracts but can include sum lump sum prices for definable work products like plans and specifications. The cost plus a percentage of cost and percentage of construction cost method of contracting cannot be used.

### **Administration Allowances**

A cost ceiling of \$100,000 is allowed for economic development projects. For FY 2022 LCDBG Program year, a maximum of \$40,000 is allowed for demonstrated needs projects. If the grantee has more than one active LCDBG project (one that has not been issued a conditional or final close out) or if the demonstrated needs project is subsequently approved as an emergency project, the maximum amount allowed for administrative costs will be reduced to \$30,000.

Reimbursable costs must be documented in accordance with the Federal Cost Principles as described in the LCDBG Handbook under *General Provisions of Selected Items of Cost*.

### **Local Government Costs**

A grantee may be reimbursed with grant funds to cover general expenses such as attendance to project related workshops, travel, staff time, legal fees, advertising fees, audit fees, and costs associated with Section 504 compliance. Reimbursable staff time does not include mayors, parish presidents and council members, as their costs are unallowable under federal regulations [2 CFR 200.444] Reimbursements for travel costs shall be in accordance with the state's Policy and Procedures Memorandum Number 49. Engineering/Architectural Fees Such fees, even those provided under a fixed price contract, must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by the Office of Community Development is not adequate. The selected contractor must provide a completed engineer cost reasonableness form found on the OCD website. The funds allowed will not exceed those identified in the engineering fee schedules and policies located on OCD's website. If, after a project has been funded, the scope of the project changes significantly, the Office of Community Development will make a determination of an amount that will be allowed.

### **CONTRACT REQUIREMENTS**

A professional services contract must include the following provisions:

- General Requirements:
  - Effective date of contract.
  - Names and addresses of grantee and firm.
  - Names of representatives of grantee and firm who will act as liaison for contract administration.
- Citation of the authority of the grantee under which the contract is entered into and source of funds.
- Conditions and terms under which the contract may be terminated by either party or remedies for violation/breach of contract.
- Scope of Services:
  - Detailed description of extent and character of the work to be performed.
- Time for contract performance and completion including project milestones, if any.
- Specification of materials or other services to be provided by both parties, such as maps, reports, printing, etc.

No additional services may be added beyond what was publicized in the solicitation.

### **Method of Compensation**

The type of contract prices for different services can vary within the same contract. Each separate service or deliverable needs to specify the type of contract price and amount in the contract. Never pay in advance of work.

### **ADMINISTRATIVE CONTRACT REQUIREMENTS**

The following conditions must be included:

- All services to be performed (including the submittal of closeout documents with the exception of the audits) will be completed within the 36-month period covered by the

grantee's contract with the State. If the solicitation and contract do not contain a provision for contract extension, a new procurement must commence after the 36-month period.

- The Environmental Review Record must be submitted to the OCD, reviewed, and the grantee be given authority by the OCD to publish appropriate notices and to request release of grant funds within five months of the date of authorization to incur costs. All other contract conditions will be cleared within five months of the date of the authorization to incur costs. If the administrative contract conditions have not been cleared at the end of the five-month calendar period, \$250 per working day will be deducted from the amount of LCDBG funds allowed for administration. If the grantee is not using LCDBG funds to pay for administrative services, the penalty will be deducted from the construction line item in the contract and disallowed. The State reserves the right to grant a time extension where reasons for not meeting the time requirement were beyond the control of the administrative consultant.
- Final payment for the Program Closeout task will not be made until the grantee has received the State's approval of all closeout documentation.

### **ENGINEERING/ARCHITECTURAL CONTRACT REQUIREMENTS**

The requirements for engineering and/or architectural requirements are identified in the current LCDBG Grantee Handbook.

### **CONTRACTOR CLEARANCE**

Contractor clearance must be obtained from the Office of Community Development on administrative consulting, architectural, and engineering firms that have not provided services to grantees under the LCDBG Program within the previous five program years regardless of the source of funding (Exhibit A35-Verification of Professional Services Eligibility). Clearance must be obtained following grant award and before any costs are incurred other than pre-agreement costs. Firms that have participated in the Program within the previous five program years do not require clearance. Contractor clearance is not required for any other professional services.

### **RECORDKEEPING**

The grantee should set up a file and maintain the following documentation in order to show compliance with the applicable State and federal requirements:

- Copy of the advertisements requesting RFP's or qualification statements.
- Names and addresses of the three (or more) firms that were sent copies of the RFP, if directly solicited.
- Copy of the solicitation requesting RFP's or qualification statements; such package solicitation must identify the selection criteria that will be utilized in rating the RFP's or qualification statements received.
- Description of the method used to select consultants.
- RFP's and qualification statements received.
- Written evaluation of the RFP's and qualification statements received.
- Written statement explaining the basis of selection.
- Copy of the completed Cost Reasonableness form.
- Verification of clearance of firms.

## CONTINUUM OF VALUE

The Federal procurement regulations use a “Best value continuum” where in different types of acquisitions, the relative importance of cost or price may vary. This allows for grant recipients to accept RFPs for other than the lowest priced proposal, because the lowest price may not necessarily be the best value.

When using the competitive proposal procurement method, the federal procurement regulations require that you consider at least one non-cost factor. This procurement process permits tradeoffs among cost or price and other non-cost factors. The non-cost factors are typically categorized as qualifications, experience, capabilities and past performance. Some cost factors can better establish non-cost value than others can. The issuer of the solicitation must establish the basis of the perceived benefits of the higher priced proposal and how it shall merit the additional cost. The best value continuum allows all for evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price. Using the competitive proposal method does not automatically assume that the non-cost [or technical or qualitative] factors will always be significantly more important than price or cost. The issuer must establish the better value to be obtained from the non-cost evaluation factors. The more complex and detailed the non-cost evaluation factors, the greater weight can be applied to the non-cost factors and the lesser weight to price and cost. However, this also requires more information to be submitted by the proposers and more work by the issuer in evaluating the proposal. The chart below provides a guide in using the Best value continuum for allocating evaluation weights.

