

Chapter 6 – Procurement Methods and Contractual Requirements

6.1 Introduction

This chapter establishes standards and guidelines for the procuring of supplies, equipment, construction, engineering, architectural, consulting, and other professional services for CDBG-DR programs. The purpose of establishing standards is to verify that the materials and services procured are obtained efficiently, and economically and in compliance with the provisions of applicable Federal and State laws and executive orders.

The standards presented do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with sound business judgment and administrative practices, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include, but are not limited to, source evaluation, protests, disputes, and claims.

6.2 Procurement Policy

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 24 CFR 85.36. If the policy does not contain all federal requirements (and the grantee intends to use CDBG-DR funds to pay for such services), the policy must be amended accordingly. A sample procurement policy is included as (Appendix 6-1) Joplin Procurement Procedures).

The grantee's procurement policy must address the following:

1. A code of conduct that prohibits elected officials, staff, or agents from personally benefiting from CDBG-DR 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 grantee officials, staff or agents, or by contractors or their agents must be identified [24 CFR 85.36 (b) (3)].
2. Proposed procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to validate costs are "reasonable" CFR 85.36 (b) (4)].
3. 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 [24 CFR 85.36 (e)].
4. The method of contracting outlined in the policy should be acceptable (fixed price, cost reimbursement, purchase orders, etc.). Cost plus a percentage of cost contracting must be specifically prohibited if CDBG-DR funds are involved [24 CFR 85.36 (f) (4)] and percentage construction cost.

5. Procedures to handle and resolve disputes relating to procurement actions of the grantee must be included [24 CFR 85.36 (b) (12)].
6. All procurement transactions, regardless of dollar amount, must be conducted so as to provide “maximum open and free competition” [24 CFR 85.36 (c)]. Some of the situations considered to be restrictive of competition include, but are not limited to:
 - a. Placing unreasonable requirements on firms in order for them to qualify to do business; requiring unnecessary experience and excessive bonding;
 - b. Noncompetitive pricing practices between firms or between affiliated companies;
 - c. Noncompetitive awards to consultants that are on retainer contracts;
 - d. Organizational conflicts of interest;
 - e. Specifying only a “brand name” product instead of allowing an “equal” product to be offered and describing the performance of other relevant requirements of the procurement; and
 - f. Any arbitrary action in the procurement process.
7. Methods of procurement to be followed must be included (Subsections 7.0 through 11.0 below and 24 CFR 85.36 (d)).

6.3 Procurement Procedures

6.3.1 Selection Procedures

In accordance with 24 CFR 85.36 (c) (3), selection procedures for procurement transactions are required to be written prior to securing contract services. These procedures must provide that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
2. All requirements which the offerors must fulfill; and
3. All other factors used in evaluating bids or proposals.

6.3.2 Preparing Contracting Procedures to Meet Equal Opportunity Requirements

Language supporting equal opportunity must be included in the bid specifications and contract documents, contractor eligibility must be verified, required documentation must be secured, and compliance must be monitored. See Appendix 6-2 for sample bid documents and construction contract provisions.

Affirmative efforts to use minority and women owned firms must be made by CDBG-DR recipients when possible:

1. Place qualified firms on solicitation lists.
2. Divide total requirements into smaller tasks.
3. Establish delivery schedules that encourage participation.
4. Use SBA and Minority Business Development Agency services.
5. Require prime contractors to take same affirmative steps.
6. A description of the equal opportunity provisions and their applicability are found in Section 8 - Civil Rights.

6.4 Conflict of Interest

An organizational conflict of interest means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Conflicts of interest in the award and/or administration of contracts must be avoided.

"No employee ... of the grantee shall participate in 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. Such a conflict would arise when...the employee, any member of his (her) immediate family, his or her partner...has a financial or other interest in the firm selected for award" (24 CFR 85.36(b) (3)).

Other federal regulations with which the grantee must comply are the conflict of interest requirements in 24 CFR 570.611 which are included as Appendix 6-3. Conflicts of interest may be governed also by state law (Appendix 6-3b Missouri Ethics Commission Conflict of Interest).

6.5 Contract Administration and Records

In accordance with the requirements of 24 CFR 85.36 (b)(9) grantees and subgrantees are required to maintain records in sufficient to detail to relate the significant history of a procurement. These records shall include, but are not limited to, the following:

1. Rationale for the method of procurement;
2. Selection of contract type;
3. Contractor selection or rejection; and,
4. The basis for the contract price.

It is the Grantees responsibility to also maintain a contract administration system to monitor contractor's performance against the terms, conditions, and specifications of their contracts or purchase orders.

A complete listing of required procurement and contract documentation that must be maintained is included in Section 4 – Records Management. The procurement records should:

1. Support an auditor or other interested party to track the nature of the goods or services bought with public funds;
2. Track the entire process used to purchase those goods and services; and,
3. Show that the public body obtained high quality goods and services at the lowest possible price through an open, competitive process.

6.5.1 Contract Management

It is the responsibility of the grantee to manage the contracts executed with CDBG-DR funds. It takes substantial time and commitment by designated staff with a good understanding of the project.

Contract management is a large part of any project's success. It is important that all parties in a contract are held to the roles and responsibilities for which they are receiving payment. Project delays or problems are often the result of misunderstandings, assumptions of the responsibilities of different parties in a contract, or of parties not performing their work to a standard. To correct these problems, the grantee must make contract language clear and concise.

Before entering into a contract it is important to validate that the contracts are written so that they are based on a lump sum or unit price. Use care to address any hidden or unexpected costs or additional fees that may have been added to the contract. Such fees may include per hour additional fees for surveying, obtaining easements, etc. Often grantees may think these costs are part of the base contract and have not allowed for the additional cost in their budget.

The engineering firm or the administrative firm most often prepares professional service contracts and construction contracts. It is the responsibility of the grantee to read and understand the contract documents. The contract documents should be reviewed to verify that the expected scope of work and the agreed cost is included.

6.5.1.1 Contract Content

The CDBG-DR Program does have both contract documents and specific language, which is a standard part of every contract, executed involving CDBG-DR dollars. Please note that while the content is required, the format is not. Many engineering firms and legal firms provide contract language in different formats. Use of these formats is certainly acceptable to CDBG-DR. The forms provided by CDBG-DR are samples only and are meant to be a guide. Any document that is signed by the grantee and has legal implications and consequences should be carefully reviewed (by an attorney is encouraged) with respect to its completion.

To determine which documents are required in which contracts, it is helpful to determine the type of work (professional services versus construction contractors) and the amount of the contract (\$2,000, \$10,000, \$25,000, \$100,000). Thinking in terms of the procurement procedure used to acquire the service will assist the grantee toward proper contract selection and execution

1. Professional services contracts shall include the following civil rights laws, regulations, and executive orders:

Civil Rights Laws
Title VI of the Civil Rights Act of 1964
Section 3 (applicable over \$100,000)
Section 109, Housing and Community Development Act of 1974
Section 503 of the Rehabilitation Act of 1973
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975
Executive Order 11246 (over \$10,000)
Affirmative Action Plan
Authorized Employees
Construction contracts shall include the following civil rights laws, regulations, and executive orders:

2. Construction contracts shall include the following civil rights laws, regulations, and executive orders:

Civil Rights in Construction Contracts
Contractor and subcontractor certifications on Section 3
Contractor and subcontractor certifications on Labor Standards and Prevailing Wage
Section 3 Tables A, B, C, and D
Section 3 Plan
Title VI of the Civil Rights Act of 1964
Title VIII of the Civil Rights Act of 1968
Section 3 language (applicable over \$100,000)
Section 109, Housing and Community Development Act of 1974
Section 503 of the Rehabilitation Act of 1973
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975
Executive Order 11246 (over \$10,000)
Executive Order 11063
Affirmative Action Goals
Information Regarding the Use of Minority and Women’s Business Enterprises

3. Additional content, laws and regulations required for Construction Contracts:

Construction Contracts
Copeland Anti-Kickback Act
Anti-Lobbying (over \$100,000)
Contract Work Hours and Safety Standards Act, if the contract exceeds \$2,000
Davis Bacon Act, if the contract exceeds \$2,000
Missouri Prevailing Wage Law
Architectural barriers
Clean Air and Water Acts, if the contract exceeds \$100,000
Lead-Based Paint Poisoning Prevention Act
Bid Bonds (equal to 5% of bid)
Performance bonds (over \$25,000, equal to 100% of contract price)
Payment bonds (over \$25,000, equal to 100% of contract price)
Federal Labor Standards Provisions (HUD Form 4010)
CDBG-DR General Conditions (or equivalent)
HUD Supplemental Conditions
Certificate of Owner's Attorney

4. Contents of Bid Packet for Construction Contracts:

Bid Packet
Advertisement for Bids form
Information for Bidders
Bid Bond form
Unit Price Bids form
Bidder Qualification
Bidder EEO Certification
Certification of Bidder Regarding Section 3 and Segregated Facilities
Bidder Section 3 Plan Format - Affirmative Action Plan
Proposed Subcontracts Breakdown
Bidder Section 3 estimated new hires
Contractor Section 3 new hires report
Contractor Section 3 business utilization report
Subcontractor EEO Certification
Certification of Proposed Subcontractor Regarding Section 3 and Segregated Facilities
Bonding and Insurance Requirements
Certification Regarding Government Wide Restriction on Lobbying

The executed Contract Agreement form (blank)
Certificate of Owners Attorney
General Conditions and Supplemental General Conditions
Wage Rate Decisions - Missouri and Federal
Specifications/Drawings/Maps/Site locations
Federal Labor Standards Provisions
Attachment to Federal Labor Standards Provisions
Affidavit Section 285.530, Revised Statutes of Missouri

5. Additional forms, clauses and references in *any type of contract* should include, but is not limited to:

Form/Clause or Reference	Definition
Executed Contract Form:	The binding agreement with appropriate signatures of all parties attested and dated.
Certificate of Owner’s Attorney:	A record of the local attorney review and acceptance of the terms of the contract.
Or Equal Clause:	Language that tells the bidder that any references to brand names are solely for explanation/clarification and that any and all equals are allowed.
Required Levels of Insurance:	Information for the bidder listing all necessary types and levels of insurance: worker’s compensation, public liability and property damage, vehicle liability, special hazards, builder’s risk, etc.
Subcontracting:	A statement of the terms under which any part of the contract may be subcontracted.
Architects/Engineers Authority:	Provides information to the contractor that the owner has given the decision-making authority, regarding specifications relative to the contract, to the engineer or architect.
Conflicting Conditions:	Provides rules for which condition applies when contract documents are found to have two statements in conflict.
Anti-Lobbying, Over \$100,000:	The form preventing the contracted agent from using any of the CDBG-DR funds to lobby a member of Congress.
Specifications:	The exact detail of the work to be completed.
Period of Service:	The time for which the contract is valid and the date that the work is to be completed.
Scope of Services:	The detailed activities that the contracted agent is expected to perform for payment under the terms of the contract.
Address of The Work Sites:	The exact project site location(s).

Schedule of Payment:	The allowed drawdown of funds to be paid under the contract (often coincides with the milestones).
Applicable Retainage (Usually 10%):	The amount held by the community until the project is 100% complete, used as a control device.
Final Inspection:	The act of the responsible party(ies), usually the engineer, to inspect the work completed and recommend final payment.
Engineer/Consultant's Certification for Acceptance and Final Payment:	To be completed by the project engineer once final inspection of all work under the contract documents has been completed in accordance with the drawings and specification and is functioning properly. Recommendation for final payment.
Termination:	The circumstances under which designated parties may terminate the contract, usually described for cause or convenience.
Changes:	Describes the only process or circumstances where changes may be approved by owner and result in payment.
Extras:	Describes the only process or circumstances where owner can add extras to work and result in payment without invalidating contract.
Completion Time/Liquidated Damage:	Spells out completion date expectations for work and prescribes level of daily monetary penalty to contractor for days beyond prescribed date.
Correction of Work:	Provides information to contractor that outlines the correction process and expense if work is found by Engineer or Architect inspection to be deficient.
Personnel:	Requires professional service provider or contractor to employ adequate, qualified personnel, licensed to complete work under the terms of the contract.
Assignability:	Limits any party's ability to assign the contract to any other person or firm without the prior written consent of all parties to the contract.
Reports and Information:	Describes the necessary written reports expected to be furnished by the professional service provider or contractor to the community and the times that such reports are due.
Records and Audits:	Requires the maintenance of records (personnel, property, and financial) to verify proper accounting, and the conditions under which they are to be made available.
Findings Confidential:	Requires the permission of the community before any records or reports are provided to any persons not a party to the contract.
Copyright/Patent:	Limits copyright and patent activities by the professional service provider or contractor.

Weather Conditions:	Describes responsibility of the contractor for protection of work completed from weather damage and the financially responsible party if damage occurs.
Compliance with Local Laws:	Spells out to the professional service provider or contractor the necessary compliance with local, state, and Federal laws.
Interest of Parties:	Clause defines and prohibits conflicts of interest, financial gain by any party to contract.

6.5.1.2 Common Rules Regarding Contracting with CDBG-DR Funds

1. All services, professional, or construction, paid in whole or in part with CDBG-DR funds, require the execution of a formal contract.
2. The use of CDBG-DR funds, regardless of amount, for payment of any service under contract in a grant, initiates the contracting requirements described in this chapter. The total amount of the contract will often indicate the proper documentation to be included in the contract.
3. All contracts should contain a clear, concise, and detailed description of the:
 - Scope of work;
 - Total cost;
 - Duration or life of the contract;
 - Compliance requirements;
 - Reporting responsibilities; and,
 - Contract content paragraphs listed above
4. All contracts that are found to be incomplete at the time of monitoring may require a contract amendment to correct the deficiency.
5. All contracts requesting payment for activities not clearly defined in the scope of services may be denied CDBG-DR funding.
6. It is the responsibility of the City to manage all contracts executed for CDBG-DR funded projects.
7. All contracts using CDBG-DR funds for payment must pass a cost reasonableness test.

6.5.1.3 Acceptable Contract Cost Structures

All construction contract fees shall be based upon a fixed price which can be lump sum or unit price. All professional service contracts shall be based upon a lump sum or a cost-plus-fixed-fee. Cost plus a percentage of cost and percentage of construction cost methods are prohibited.

6.5.1.4 Alternative Deductibles/Alternate Add-Ons in Construction Bidding

In an effort to remain flexible in the bidding process for construction activities, the grantee may set in place alternative deductibles or alternate add-ons. These items must be clearly marked as such and, in the event of bids received over budget, may be “deducted” from the scope of the project, or in the event of bids received under budget, may be “added” to the scope of the project. All alternative deductibles/additions must be assigned a number in order of preference to be either eliminated or added. Any eliminations or additions of these items must follow that numerical guide (e.g., Item #2 may

not be deducted or added prior to Item #1). No items may be eliminated or added from a bid process if they were not initially indicated as an alternative deductible or alternate add-on. Alternate deductibles should include, but not be limited to, items the grantee may be able to complete on its own or items that would not have an adverse effect on the project if omitted.

6.5.1.5 Negotiation

Negotiation is not allowed. The grantee may not negotiate a lesser price with any bidder in order to match the funds budgeted. This includes negotiating change orders that would be initiated after a contract award.

6.5.1.6 Addendum Procedure

If the owner or engineer finds that changes or additions to the bid packet must be made prior to the bid deadline date, an addendum must be executed. The addendum must spell out the change or addition and must be distributed to all interested bidders. This action must not take place later than 72 hours prior to the bid submission deadline. If this time period is not possible, the addendum may be distributed and the deadline may be delayed exactly one week. All bidders obtaining bid documents must be made aware of all addenda in order not to provide an unfair advantage in the procurement procedures.

6.5.1.7 Amendment Procedure

If, during the life or duration of any formal contract, the parties agree to a change in the design, duration, cost, or any of the terms of the contract, a formal amendment may be executed. For this amendment to be valid and recognized by CDBG-DR, it must be in writing, signed, and attested by both parties and attached to all original contract documents. The grantee may require review by their attorney prior to implementing the process. Any changes or change orders that directly affect the use of CDBG-DR dollars, the scope of the project, or greatly changes the duration of the contract should be reviewed with a CDBG-DR Compliance Specialist prior to execution.

Reports should be prepared and submitted by each contractor whenever it is determined that any change in the design, cost, or duration of the project is necessary. Changes in the project which increase the cost of the activity by more than \$10,000 or 10 percent of the approved CDBG-DR budget line amount, whichever is less, must first be approved by the City of Joplin, Planning, Development and Neighborhood Services Department.

6.5.1.8 Award of Contract

The City should award contracts relevant to CDBG-DR funded projects in the same manner as they would if using local funds. The required process for entering into contracts (which may be set by local ordinance or resolution) should be reviewed and used for CDBG-DR projects. If the city requires attorney review and board approval prior to signing any contract, then that method should be practiced with CDBG-DR projects as well.

6.5.1.9 Federally Debarred Contractors

The City should contact HUD prior to the award of any construction-related contract in order to clear the proposed contractor. Before the grantee can sign a contract with a proposed contractor, the grantee

must verify that the contractor is not on the federal listing of contractors unable to perform work under a federally sponsored project.

6.5.1.10 Contractors Licensed to Business in Missouri

All professional service contracts and construction contracts paid for with CDBG-DR funds must use firms/businesses that are licensed to operate in the State of Missouri. No grant funds will be released to pay businesses that do not hold this license.

6.5.1.11 Businesses in Good Standing with the Secretary of State

All licensed businesses must be in good standing with the Secretary of State's office if they are to be paid with CDBG-DR funds.

6.5.1.12 Department of Treasury's Listing of Approved Sureties

The bonding company used by the contractor to provide payment and bonds must be listed with the Department of the Treasury's Listing of Approved Sureties.

6.5.1.13 Internal Control

Proper internal control for each contractor may include a contract file that includes the following:

- A signed contract and amendments or change orders
- A schedule of payments supported by:
 - copies of time sheets or payroll records
 - copies of checks or transfer notifications
 - copies of invoices
- All project-related correspondence
- Property records (where appropriate)
- Any notice of cancellation, termination, or suspension of the contract
- All field inspection reports and employee interviews
- Other data as required by the recipient to properly administer the contract

6.5.1.14 Engineer/Consultant's Certificate of Completed Work

A copy of the Certificate for Acceptance, and Final Payment, signed by the project engineer/consultant, must be submitted to City of Joplin, Planning, Development and Neighborhood Services Department prior to project closeout. This certificate must cover all work included in the project (regardless of funding source), including grantee cash and in-kind. The certificate must state that work has been completed in accordance with drawings and specifications and is functioning properly with the recommendation for Final Payment.

A complete listing of required procurement and contract documentation that must be maintained is included in Section 4 – Records Management. The procurement records should:

1. Support an auditor or other interested party to track the nature of the goods or services bought with public funds;
2. Track the entire process used to purchase those goods and services; and,

3. Show that the public body obtained high quality goods and services at the lowest possible price through an open, competitive process.

6.6 Methods of Procurement Overview

Procurement Type	Cost Reasonableness	Contract Type	Solicitation Method	Applications
Small Purchase See 6.7.0	> Price Analysis	> Purchase Order > Fixed Price	> Quotations > Submitted Bids	> Produced Items > Single Task Services > Supplies
Sealed Bid (formal advertising) see 6.8.0	> Price Analysis	> Fixed Price	> Submitted Bids	> Construction Items > Produced or Designed Items
Competitive Proposals - see 6.10.0	> Price Analysis > Cost Analysis	> Cost Reimbursement > Fixed Price > Time & Materials	> Submitted Proposals	> Professional Services > Multi Task Services > Designed Items
Non-competitive Proposals - see 6.11.0	> Cost Analysis	> Cost Reimbursement > Fixed Price > Time & Materials	> Submitted Proposals	> Produced Items > Single Task Services > Professional Services > Multi Task Services > Designed Items

The procurement process must be in accordance with the federal requirements of 24 CFR 85.36.

6.6.1 Cost Reasonableness

When determining the appropriate procurement method to use, the grantee must either use price competition or perform a cost analysis to determine reasonableness of costs.

6.6.1.1 Price Analysis

Price Analysis means that the grantee requests several bids, proposals, or quotes for the materials, supplies, or service being procured. The winning offeror is the firm that offers the most competitive price for the items being sourced.

6.6.1.2 Cost Analysis

A cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

A cost analysis requires verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits. A cost analysis is always required when the noncompetitive proposals method is used. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established. Appendix 6-4 contains a sample form and instructions that can be used to perform the cost analysis, as well as additional HUD guidance.

6.6.2 Contract Type

6.6.2.1 Purchase Order

Supplies, single task services, and produced items procured through the small purchase method will require a purchase order.

6.6.2.2 Fixed Price

A fixed price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. Firm-fixed-price contracts are suitable for acquiring commercial items (including construction) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset.

6.6.2.3 Cost Reimbursement

A cost reimbursement contract provides 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 contracting officer. Cost-reimbursement contracts will be used when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

6.6.2.4 Time and Materials

A time and materials contract provides for payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials. This contract type should be used only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.

6.6.3 Solicitation Methods

6.6.3.1 Quotations

The grantee should obtain at least three quotations (“quotes”) from qualified sources to procure items, supplies, or a single task service using the small purchase method. The response of “not interested” does not qualify as a quote.

6.6.3.2 Submitted Bids

When using the procurement by sealed bids method, the grantee is required to provide a complete, adequate, and realistic specification or purchase description via publicly advertised invitation for bids. A submitted bid is a response to the grantee’s invitation for bids. See Subsection 6.9.0 Procurement by competitive proposals, below, for additional information regarding the bids package process.

6.6.3.3 Submitted Proposals

Submitted proposals are the responses to a grantee's Request for Proposal (RFP) or Request for Qualifications (RFQ). This type of solicitation method is used when the competitive proposal or noncompetitive proposal procurement method is used. See Subsections 6.9.1 Request for Proposal and 6.9.2 Qualification Statements, below, for additional information regarding the RFP and RFQ process.

6.7 Procurement by Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property (supplies costing less than \$25,000 and services costing less than \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from at least three qualified sources. The grantee can request quotes from qualified sources via telephone, fax, email, mail, or any other reasonable method. The grantee should maintain written documentation on the names of the businesses contacted and how they were contacted; the prices that were quoted; and the basis for selecting one firm over the other(s).

6.8 Procurement by Sealed Bids (formal advertising)

Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price- see below) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions below, apply.

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

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

If sealed bids are used, the following requirements apply:

1. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
2. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
3. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
4. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
5. Any or all bids may be rejected if there is a sound documented reason.

6.8.1 Creating, Advertising, and Opening Bids

6.8.1.1 Creating the Bid Package

1. Write the technical bid specifications:
 - a. Usually written by the grantee's architect or engineer on the basis of prepared plans or working drawings.
 - b. Provide a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project.
 - c. Must be sealed by an architect or engineer registered in Missouri.
 - d. If the project falls under the jurisdiction of another State agency (e.g. Department of Health and Hospitals for sewer and water projects), the plans and specifications must be approved by the cognizant State agency prior to construction.
 - f. For fire stations/garages and buildings that will be accessible to the public constructed, the architect or engineer must execute a certification that applicable standards of accessibility by the handicapped have been or will be satisfied or specify the basis for exemption. Such certification is to be co-signed by a City official, filed in the contract documents file, and a copy sent to the State.
 - g. The base bid should include all components of the approved project. The base bid should not include any items which were not included in the approved application or which have not received subsequent approval from the HUD.
2. Obtain all lands, rights-of-way and easements necessary for carrying out the project.
3. If the grantee's construction project involves real property acquisition, the grantee should make sure the acquisition is undertaken according to the provisions of the Uniform Relocation Act (URA). See Section 10 - Acquisition and Relocation for additional acquisition and URA guidance.
4. Contact the regional notification center and the owners of underground utilities or facilities that are not members of the regional notification center for the existence and location of all underground utilities and facilities within the construction area.

5. When preparing the plans and specifications for the bid package, the following requirements pertaining to service connection line and hookup fees must be kept in mind:
 - a. As stated in Section 24 CFR 570.202(b) (6) of the Housing and Community Development Act of 1974, as amended, the "financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines" is an eligible cost. It is eligible, however, as rehabilitation and will be considered as an integral part of the overall sewer or water project.
 - b. Develop cost and pricing formats.
 - c. Generally the street, water, sewer, utility and landscaping projects will be unit price contracts, while building type contracts will be lump sum.
 - d. For fixed price contracts with unit cost pricing, the bid specifications should delineate each type of item, estimated quantity, unit price, and total cost.

6.8.1.2 Bid Process

The grantee must verify that the bid process is in compliance with the Missouri Code of State Regulations (CSR), Title 40: Purchasing and Materials Management. These statutes are continually being amended, revised, and superseded; therefore, it is the grantee's responsibility to assure compliance with the most recent and current regulations. The following steps must be taken prior to advertising for bids:

1. For Infrastructure projects, submit the final plans, specifications, and cost estimate to the HUD for review.
2. The grantee will be notified by HUD that they may advertise for bids.

6.8.1.3 Advertising for Bids

1. For projects that involve the development of plans and specifications, bids must be solicited by public advertising once approval to advertise is received from HUD.
2. The Public Bid Law requires that the advertisement for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality and the first advertisement shall appear at least 25 days before the opening of bids for construction projects.
3. For materials purchases, the Public Bid Law requires the advertisement to be published two times in a newspaper in the locality and the first advertisement shall appear at least 15 days before the opening of bids. The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday.
4. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until 24 hours before the bid opening date.
5. The advertisement must call the bidders attention to the conditions of employment and requirements of federal prevailing wage rates, Segregated Facility, Section 3 of the HUD Act of 1968, Section 109 and Equal Opportunity.
6. If the grantee and/or HUD amend the bid documents during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents.
7. No public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening of bids, excluding

Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least 7 days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum shall state the revised time and date for the opening of bids. A copy of each addendum shall be submitted to HUD at the time the addendum is issued, including addenda solely pertaining to federal wage rate decisions.

8. All bids received prior to the opening of bids must remain sealed and in a safe place until the bid opening.
9. A copy of the publicized bid advertisement, including the publication date, must be submitted to the HUD staff person who is assigned to the grant once all three advertisements have been published.

6.8.1.4 Public Bid Opening

The following provides general guidance:

1. The bids should be read aloud during bid opening and the apparent low bidder should be determined during the bid opening
2. Bids must also be reviewed for both technical and legal responsiveness of bids.
3. The bidders must be evaluated as having the capacity to furnish products and/or services required.
4. Minutes of the bid opening, along with a tabulation of bids, should be placed in the contract file and sent to HUD.

After the bid opening, the grantee must take action within 45 days to either award a contract to the lowest responsible bidder or to reject bids. The grantee and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days. A public entity may reject any and all bids for just cause. Also, a contract cannot be awarded with an incorrect federal wage decision. The grantee should verify the proper choice of the federal wage decision per the process described in Section 7 - Labor Regulations.

6.9 Procurement by Competitive Proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

1. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
2. Proposals will be solicited from at least three qualified sources;

3. Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
4. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;
5. Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. This qualifications-based approach to the competitive proposals method may **not** be used to purchase other than A/E services; and,
6. If only one bid or proposal is received, the Grantee must receive approval from HUD.

6.9.1 Request for Proposals (RFPs)

Request for Proposals (RFPs) are used to procure professional services except for A/E professional (design) services when the competitive negotiation method is used. Request for Qualifications are used to procure A/E professional services (See Subsection 6.9.2). RFPs for competitive acquisitions shall, at a minimum, describe the:

1. Grantee's requirement;
2. Anticipated terms and conditions that will apply to the contract:
 - a. The solicitation may authorize offerors to propose alternative terms and conditions; and
 - b. When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (e.g., place of performance or payment and funding requirements)
3. Information required to be in the offeror's proposal; and,
4. Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance.

A sample advertisement of a RFP for an administrative consultant is included as Appendix 6-5. Also included as Appendix 6-6 is a Sample Scope of Services for Housing Rehabilitation Program to assist in the development of housing specific scope of services RFP. A sample RFP for an administrative consultant is included as Appendix 6-7.

6.9.2 Qualification Statements - Architectural/ Engineering Services

Request for Qualifications (RFQs) are used to procure the professional (design) services of an engineering firm or architectural firm when using the competitive negotiation method. Qualification statements cannot be used to procure any other service.

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 RFQ. The grantee should negotiate costs with the top ranked firm.

RFQs cannot be used to procure project management or construction management services.

These types of services must be procured using an RFP (See Subsection 6.9.1).

6.9.3 Review of Responses

One of two procedures can be used to review responses to an RFP or an RFQ. The procedure chosen must be identified in the advertisement. The procedure cannot be changed once the procurement process is initiated.

1. Establish 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”. The proposals would be re-evaluated and the highest scoring firm would be chosen.
2. Evaluate the proposal(s) according to the selection criteria and award the contract to the highest scoring firm.

6.10 Procurement by Noncompetitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

GRANTEES MUST OBTAIN PRIOR APPROVAL FROM HUD PRIOR TO USING THIS PROCUREMENT METHOD.

1. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
 - a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The awarding agency authorizes noncompetitive proposals; or
 - d. After solicitation of a number of sources, competition is determined inadequate.
2. Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required (See Subsection 7.1.2 above).

6.11 Developing Procedures for When Bids Exceed Cost Estimates.

There are instances when the lowest bid received will exceed the amount of funds allocated for the project. When this happens, HUD should be consulted to determine the best option to proceed.

Procedures should be developed to execute the following available options:

1. Reject all bids received
2. Rework the specifications within the bid package
3. Consult with HUD regarding any proposed changes to the plans and/or specifications
4. Once authorized by HUD, re-advertise the project
5. Make up the difference between the available funds and the amount of the lowest bid by reallocating funds
6. Make up the difference between the available funds and the amount of the lowest bid with other funding sources (i.e. local funds).

6.12 Verification of Contractor Eligibility

Grantees must verify that all contractors receiving CDBG-DR funds meet all eligibility requirements. The following steps should be taken to verify and document contractor eligibility for all services procured.

6.12.1 Prime Contractor Clearance

Prior to the award of a construction contract with a **prime** contractor, the grantee must obtain contractor clearance. To obtain clearance, the following steps should be taken:

1. The grantee should search the following web site: <https://www.sam.gov/portal/public/SAM/>.
2. The search of this web site only determines whether the contractor is debarred; other types of performance information are not gathered.
3. The grantee must complete the Verification of Contractor Eligibility Form (Appendix 6-8) and maintain in the project file.

6.12.2 Professional Consulting and Engineering Firms Clearance

Consulting and/or engineering firms who are either new to a CDBG-DR Program or have not performed services associated with a CDBG-DR Program within the previous five years must also be cleared. For clearance of professional firms, use Appendix 6-9.

6.12.3 Subcontractor Clearance

Grantees must make prime contractors aware that sub-contractor clearance is their responsibility, as such they must verify subcontractor eligibility based on factors such as past performance, a yellow page listing, and proof of liability insurance, possession of a federal ID tax number, debarment, and state licensing requirements. The prime contractor may use the SAM website referenced in section 6.12.1 Prime Contractor Clearance. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, the Grantee should urge prime contractors to closely scrutinize subcontractors. If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated and the matter reported to HUD.

6.13 Notice of Contract Award

Once a contractor has been selected using the appropriate solicitation method, the grantee must submit a completed Notice of Contract Award form to HUD for all prime contracts, along with a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project.

6.14 Preparation of a Contract

Depending on the type procurement used, the grantee should execute the required contract type. Any standard contract shall be modified to include CDBG-DR Program requirements. The program requirements are:

1. Construction contracts shall not contain any cost plus or incentive savings provisions. Therefore, the contract shall not make reference to compensation adjustments for cost plus or incentive savings provisions.
2. The method of contracting cannot be cost plus a percentage of cost or a percentage of construction cost. For example, a contractor cannot add a 15% “handling fee” to process an invoice for geotechnical services.
 - a. Grantees must incorporate performance requirements and penalties into each procured contract or agreement. Contracts with contractors are procured pursuant to 24 CFR Parts 8 and 85 as applicable or equivalent policies and procedures, but Grantee agreements with subrecipients are not subject to these procurement requirements.
 - b. Grantees are required to verify that all contracts and agreements with subrecipients, recipients, and contractors clearly stipulate the period of performance or date of completion.

The requirements within a contract depend on the type of services provided. The following Subsections provide guidance on these specific requirements for consulting, appraisal, A/E, and construction services. Regardless of the services provided or templates used, all contracts must include all required CDBG-DR Compliance Provisions.

6.14.1 Consulting and Appraisal Contract Requirements

The grantee must execute its contracts according to the specific project requirements. The sample contracts included as Appendices must be modified to include the specific scope of services procured and required CDBG-DR Compliance Provisions for Professional Services Contracts (see Appendix 6-10). A sample contract for consulting services is included as Appendix 6-11. A contract for appraisal services Appendix 6-12 should be used when executing.

6.14.2 Architectural/Engineering Contract Requirements

The grantee may use the standard A/E contract templates (AIA or EICDS) when executing a contract for professional design services with architectural and engineering firms or other contract. The contract must include all required CDBG-DR Compliance Provisions for Professional Services Contracts.

Architectural/ Engineering fees, even those provided under either a fixed price contract or cost reimbursement contract, must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by HUD is not adequate. The funds allowed will not exceed those identified in the applicable Application Package. If, after a project has been funded, the scope of the project changes significantly, the HUD will make a determination of any additional amount that will be allowed. Justification for additional services should be provided to HUD.

It is understood that the amount of funds available for engineering/architectural services is contingent upon the amount of CDBG-DR funds allowed by HUD. The firm will not be compensated from the applicable CDBG-DR Program if the project does not receive funding.

The final plans and specifications and cost estimate must be submitted to HUD for review prior to advertising for bids.

6.14.3 Construction Services Contract Requirements

The grantee can use a generic construction contract, but must include the CDBG-DR compliance provisions for construction contracts included in Appendix 6-2. A generic construction contract is also included as Appendix 6-2.

Firm-fixed-price contracts used to acquire construction may be priced (1) on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), (2) on a unit-price basis.

Lump-sum pricing shall be used in preference to unit pricing except when:

1. Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;
2. Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;
3. Estimated quantities of work required may change significantly during construction; or
4. Offerors would have to expend unusual effort to develop adequate estimates.

6.14.3.1 Bonding

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all

the contractor's obligations under such contract. A sample performance bond is included as Appendix 6-2.

3. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. A sample payment bond is included as Appendix 6-2.

The form attached as Appendix 6-13, can be used to verify the contractor’s bonding arrangement.

6.15 Section 3 of the HUD Act of 1968 Covered Contracts Requirements

Compliance requirements of Section 3 of the HUD Act of 1968 are triggered when a recipient receives in **excess** of \$200,000. If Section 3 of the HUD Act of 1968 is triggered for the grantee, then contractors/subcontractors whose contracts **exceed** \$100,000 must also comply. See Section 8: Civil Rights for additional information regarding Section 3 of the HUD Act of 1968.