

SECTION 5 – REQUIREMENTS AND PROCEDURES FOR PROCURING PROFESSIONAL SERVICES

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OVERVIEW

CDBG grantees requiring the services of engineers, architects or other consultants must take the steps outlined below to procure professional services. These steps describe procurement methods that incorporate 2 CFR 200 Subpart D (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl), federal provisions covering procurement of professional service contracts, and RCW 39.80 (<http://app.leg.wa.gov/rcw/default.aspx?cite=39.80>), state provisions applicable to procuring architectural and engineering services. For more detailed information on contracting for services in Washington State, download MRSC's publication, [Contracting for Services - Guidelines for Local Governments in Washington State](#).

This section also incorporates applicable federal civil rights and record keeping requirements. However, the handbook sections on civil rights and record keeping should be reviewed for a complete understanding of CDBG requirements.



Warning: The following activities are NOT allowed until AFTER completion of the environmental review and Commerce releases funds:

- design studies relative to the final site
- final design, plans and specifications
- advertising for construction bids
- construction contracts or subcontracts

In some instances, preliminary design work necessary for completion of the environmental review may be allowed.

DEVELOP AND IMPLEMENT STANDARDS OF CONDUCT (2 CFR 200.318)

The grantee and any subrecipient are to maintain a standard code of conduct governing the performance of their employees engaged in the award and administration of federally-funded contracts. No employee, officer or agent of the grantee or any subrecipient shall participate in the selection or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. See Attachment 7-K for sample standards of conduct.

DEFINE THE SCOPE OF SERVICES

Define the nature and extent of the service(s) required. This scope of services should contain detailed and explicit descriptions of the required work. This document will ultimately serve as the scope of work for the professional service contract. Professional services contracts are generally classified as architecture and engineering contracts or personal services contracts.

Architecture and Engineering Contracts

Professional architecture and engineering (A&E) services are services provided by any person, other than an employee of the grantee/subrecipient, that fall under the general statutory definitions of:

- Architecture ([chapter 18.08 RCW](#))
- Engineering ([chapter 18.43 RCW](#))
- Land surveying ([chapter 18.43 RCW](#))
- Landscape architecture ([chapter 18.96 RCW](#))

State licenses and certifications are required in these professions.

All local governments must follow the uniform requirements of [chapter 39.80 RCW](#) when procuring professional A&E contracts. Unlike other types of contracts which are awarded to the lowest responsible bidder, A&E contracts are awarded primarily based on qualifications, rather than cost, a process known as "qualifications-based selection".

Consultants submit qualifications and/or a non-cost proposal. The grantee/subrecipient then assess the expertise of the competing firms, select the most highly-qualified firm, and negotiate the final project scope and associated fee. If they cannot reach an agreement on project scope, schedule, and budget with the most highly-qualified firm, the grantee/subrecipient begin negotiations with the next most highly qualified firm.

Personal Services Contracts

Personal services involve technical expertise provided by a consultant to accomplish a specific study, project, task, or other work. These activities and products are mostly intellectual in nature, and they do NOT include architecture and engineering services.

Examples of personal services include, but are not limited to:

- Comprehensive plans
- Legal services
- Management analyses

Certain personal services may require licensing or certification by state agencies, such as legal or accounting services.

SOLICIT QUALIFICATIONS OR PROPOSALS

Local governments generally have significant flexibility in determining how to solicit competition. Generally, the more complex or expensive the project is anticipated to be, the more rigorous the solicitation process should be.

Requests for Qualifications

Requests for Qualifications (RFQs) ask only for a firm's general capabilities, including:

- List of principals
- Previous projects
- Number of employees
- Licenses

Local governments may distribute RFQs for a services roster or as part of a formal competitive solicitation. In the case of a formal competitive solicitation, the RFQ can be combined with a Request for Proposals (RFP), or it could be distributed as the first step in the review process prior to distributing RFPs.

Requests for Proposals

Requests for Proposals (RFPs) ask proposers to submit qualifications, if not already on file, and a proposed scope of services. At a minimum, every RFP should include:

- Statement of need (scope)
- Estimated schedule
- Evaluation criteria
- Proposal elements
- Submittal deadline

DEVELOP SELECTION CRITERIA

Develop written criteria for selecting the firm or individual to perform the required services. These criteria must be used to evaluate statements of qualifications or proposals. See Attachment 5-E for a sample list of possible selection criteria.

PUBLISH ADVANCE NOTIFICATION FOR ARCHITECTURE & ENGINEERING SERVICES

For A & E Services, this notification requirement can be met in one of two ways:

- Publish an announcement for each project (Attachment 5-A[1]); or
- Publish a general announcement annually that describes the anticipated requirements for each category of service (Attachment 5-A[2]). Some jurisdictions utilize the Municipal Research and Services Center (MRSC) rosters (<http://mrscrosters.org/participating-agencies/>) to fulfill the annual advertising requirements for their professional services consultant roster.

In those instances where the jurisdiction completed the RFQ/RFP process prior to receiving the CDBG award, it MAY be necessary to conduct a new procurement process. The CDBG-funded project must fall within one of the general categories of projects listed in the earlier advertisement. Further, the RFQ/RFP process must still meet all other CDBG procurement requirements.

INCLUDE REQUIRED STATEMENTS AND TIME FOR SUBMITTALS

The following statements must be included in all RFQ/RFP advertisements:

- The (Town, City or County) of _____ is an Equal Opportunity and Affirmative Action Employer.
- Minority- and women-owned firms are encouraged to submit statements or proposals.
- This project is (funded or partially funded) through the Washington State Community Development Block Grant program with federal funds provided by the U.S. Department of Housing and Urban Development.

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Note: The funding source statement is required only where the RFQ/RFP is specifically for the CDBG-funded project.

See Attachment 5-A for an example format used for RFQ/RFP notifications.

Once the advertisement for RFQ/RFP is properly prepared, it must be published, at a minimum, once a week for two weeks in a major newspaper of general circulation. At least 14 calendar days from last publication date must be allowed for respondents to prepare and submit their statements of qualifications or proposals. If you intend to meet these notification requirements by other means, you must verify with your CDBG Project Manager.

ENCOURAGE MBE, WBE, LOCAL AND SMALL BUSINESS PARTICIPATION

Take affirmative steps to solicit statements of qualifications and proposals from local businesses and minority- and woman-business owners. To comply with affirmative action requirements, grantees must, at a minimum:

1. Post the RFQ/RFP notification on the State Office of Minority and Women’s Business Enterprises (OMWBE) website at www.omwbe.wa.gov, select “Bids & Opportunities” and then click on the “OMWBE WebAdmin” link. Jurisdictions utilizing MRSC Rosters must document posting of the MRSC Rosters- Small Works and Consultant Rosters Legal Notice (routinely displayed year around) on the OMWBE website, **OR**
2. Develop a list of minority- and women-owned businesses and send the RFQ/RFP notification to five consultants from the list. You can use the directory on the OMWBE website at www.omwbe.wa.gov or develop your own local list.

ENCOURAGE SECTION 3 BUSINESS PARTICIPATION

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 135] is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects.

- Section 3 encourages geographic preference in the evaluation of bids and proposals to the greatest extent feasible.

Section 3 Business (certification Attachment 5-F), is a business located within the Section 3 Project Benefit Area that meets a least one of the following conditions:

1. Fifty-one or more percent of the business’s ownership is held by low-income individuals, or
2. At least thirty percent of the business’s employees are low-income, or were low-income at some point during their first three years of employment with the business, or
3. More than twenty-five percent of the business’s regular activities are subcontracted out to businesses that meet either of the first two conditions above.

Section 3 is triggered when the project creates the need for new employment, contracting, or training opportunities.

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In all cases, low-income individuals and employees are described as residents earning 80 percent or less of median household income for the county. You can find the current median household income limits by county on the CDBG website, under “[Guidance Materials, LMI Data Resources, Income Limits Chart.](#)”

SMALL PURCHASE PROCEDURES

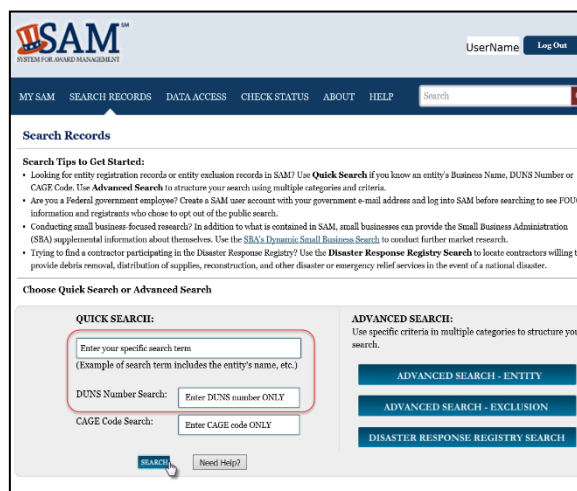
In those instances where services are not expected to cost over \$35,000 in the aggregate, small purchase procedures may be utilized to procure some consultant services. However, small purchase procedures may not be used to procure engineering or architectural services. If the jurisdiction has established a lower ceiling for small purchases, then this lower ceiling must be followed. Proposals must be solicited from at least three qualified sources.

- Efforts must be made to seek at least one quotation or proposal from a certified minority business enterprise (MBE) or from a certified woman business enterprise (WBE).
- Document all steps taken, quotations/proposals received and MBE/WBE outreach efforts made.

When using small purchase procedures, RFPs do not have to be advertised in a newspaper of general circulation. It is strongly recommended the selected firm’s references and ability to perform be thoroughly checked.

CHECK FOR ELIGIBILITY

Before awarding a contract, grantees must verify that the selected firm and the owner or president is not excluded from receiving federal funds using the System for Award Management at www.SAM.gov (24 CFR Part 24.1). Grantees must provide the CDBG Project Manager with documentation showing the date eligibility was verified. Grantees are also responsible for ensuring that all lower-tier subconsultants associated with the project are not excluded.



EVALUATE RFQ/RFP AND SELECT FIRM

Grantees must have a documented system for reviewing statements of qualifications or proposals submitted in response to the published and distributed notices. The system must include the use of selection criteria established prior to solicitation. Evaluations must be thorough, uniform and well documented.

For Architecture and Engineering Services, after evaluating the proposals, the review committee recommends a single firm for contract award based on qualifications, subject to contract negotiations. Negotiations with the recommended firm include refining the scope of work, schedule, deliverables, and price.

When determining whether the cost is fair and reasonable, consider the nature of the work, the risk assumed by the consultant, the management of any sub-consultants, and the project timeline.

If the grantee/subrecipient is unable to negotiate a fair and reasonable price with the most highly qualified firm, it may negotiate with the second-most qualified firm instead, and so on until an agreement is reached with one of the firms or the process is terminated ([RCW 39.80.050](#)). For more information, see [MRSC's Architecture and Engineering Contracts webpage](#).

For Personal Services, evaluate the proposals and negotiate a contract with the lowest responsible bidder. At least two qualified proposals must be received to have a competitive procurement. For more information, see MRSC's Architecture and Engineering Contracts webpage. For more information, see [MRSC's Personal Services Contracts webpage](#).

PREPARE THE CONTRACT

Prepare the contract agreement. A Professional Service/Consultant Agreement sample is included in Attachment 5-B. The contract must include the following provisions.

General Administrative Provisions

- Effective date of contract.
- Conditions and terms under which the contract may be terminated by either party, or remedies for violation/breach of contract.
- Errors and omissions insurance (for engineering firms only).
- Conflict of interest provisions (see Attachment 5-C).
- Access to records/records retention clauses (see Attachment 5-C).

Scope of Services

- Detailed descriptions of the extent and character of the work to be performed.
- Time for performance and completion of contract services, including project milestones, if any.
- Specifications of deliverables or other services to be provided by both parties (e.g., maps, reports and printing).

Method of Compensation

- Provisions for compensation for services.
- Maximum amount payable under the contract.
- Fee and payment schedules, if appropriate.

Required Federal Standard Provisions

- Title VI of the Civil Rights Act of 1964 (see Attachment 5-C).
- Section 109 of the Housing and Community Development Act of 1974, as Amended (see Attachment 5-C).
- Americans with Disabilities Act of 1990 (see Attachment 5-C).
- Age Discrimination Act of 1975, as Amended (see Attachment 5-C).

- Section 504 of the Rehabilitation Act of 1973, as Amended (see Attachment 5-C).
- Section 3 of the Housing and Community Development Act of 1968 (See Attachment 5-C).
The Section 3 clause is required only for contracts over \$100,000.

MONITOR CONSULTANT PERFORMANCE

Grantees must establish a system to monitor the performance of its engineer, architect or consultant. At a minimum, the system must provide for reconciling bills against applicable documentation and receiving at least a monthly briefing or report on the project status. The scope of work can provide the basis for monitoring and evaluating the performance of the engineer, architect or consultant by specifically identifying performance measures.

RECORD KEEPING AND REPORTING

Grantees are required to maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Grantees are also required to keep a copy of the legal notice or affidavit of publication and outreach efforts to minority-owned, women-owned and local businesses.

Annually report contract awards of professional services on Contract and Subcontract Activity Form (Attachment 7-J) and the Section 3 Summary Report (Attachment 7-G).

COMPLIANCE MONITORING PROCESS

CDBG Project Manager will review grantee procurement processes and records to ensure the grantee substantially fulfilled the required actions.

LIST OF REFERENCE MATERIALS

- Attachment 5-A--- Example Professional Services Solicitation (RFQ/RFP)
- Attachment 5-B--- Sample Professional Service/Consultant Agreement
- Attachment 5-C--- Required Federal Standard Provisions
- Attachment 5-D -- *No Attachment*
- Attachment 5-E--- Sample Evaluation Criteria for Selecting Consultants
- Attachment 5-F--- Sample Section 3 Business Certification

Other Sections of the Handbook

- Attachment 7-G -- Grantee Section 3 Summary Report
- Attachment 7-J --- Contract and Subcontract Activity Form
- Attachment 7-K--- Sample Standards of Conduct