

# PROCUREMENT & CONTRACTING

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## CHAPTER 3: PROCUREMENT & CONTRACTING

Units of General Local Government (UGLGs) must comply with all applicable federal, state and local procurement and contracting regulations and policies for the Community Development Block Grant (CDBG) project. Conflict of interest provisions within the Code of Federal Regulations must be addressed as part of procurement and contracting processes.

### LOCAL PROCUREMENT POLICY

The Division of Energy, Housing and Community Resources (DEHCR) requires all UGLGs to adopt written procurement procedures **prior** to the *Grant Agreement* being executed for the CDBG monies. An UGLG must use procurement procedures that are in conformance with federal, state and local laws and regulations. Federal regulations and standards are identified in 24 CFR 85, which sets forth the standards that are applicable to procurement for federal grants, cooperative agreements, and sub-awards to state, local, and Indian tribal governments. State procurement information is published on the State of Wisconsin VendorNet System: <https://vendornet.wi.gov/>.

The UGLG must have written selection procedures for adequate procurement and contracting to ensure that:

1. The purchase of unnecessary or duplicate items is avoided. Where appropriate, an analysis should be made of lease vs. purchase alternatives [24 CFR 85.36(b)(4)];
2. Whenever possible, use of federal excess and surplus property, or of intergovernmental agreements for procurement or use of common goods and services should be considered as a way to foster greater economy and efficiency [24 CFR 85.36(b)(5) and (6)];
3. All purchase orders (and contracts) are signed by the UGLG's authorized official(s);
4. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;
5. Timely payment to vendors occurs when the order is delivered, inspected, accepted and payment is authorized;
6. **A cost or price analysis is performed for every procurement action**, with contract modifications, and documentation to that effect is maintained in the UGLG's files. The method and degree of analysis is dependent on the facts surrounding the particular procurement method, but as a starting point, **the UGLG must make independent estimates before receiving bids or proposals [24 CFR 85.36(f)]**; and
7. Profit or fee is negotiated separately from price where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's

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investment, the amount of sub-contracting, the quality of past performance, and industry rates for the area [24 CFR 85.36(f)(2)].

See Attachments 3-A1 and 3-A2 for sample procurement policies.

## INITIAL PROCUREMENT DECISIONS

Questions to consider when determining the procurement requirements that apply for each CDBG project activity include:

1. Will a third party be selected to perform all or part of the CDBG project activity, using some method of procurement, or will the work be performed in-house by municipal employees (either the UGLG's own employees or through a cooperative agreement with a partnering UGLG or other governmental entity)?
  - If the work will be performed in-house by municipal employees or a regional planning commission, then no procurement process is required to be completed.
  - If contracting with a third party, then some or all federal, state and local procurement requirements will apply.
2. Will the contract be for construction, professional services (e.g., engineering, grant administration, planning, auditing, legal, etc.), or some other non-construction related work/purchase (e.g., equipment, supplies, etc.), and will CDBG funds be used to fund all or part of the contract?
  - If the contract is a construction contract, competitive procurement,\* with adherence to federal, state, and local procurement regulations and policies, is required. Refer to the procurement options summarized later in this chapter to determine which option is most appropriate based on the anticipated amount of the construction contract.
  - If the contract is a professional services contract or other non-construction contract, and CDBG funds are not funding any part of the contract, then the UGLG must ensure compliance with its local procurement policy. If CDBG funds are funding all or part of the professional services contract or other non-construction contract, then the UGLG must ensure compliance with federal, state, and local procurement regulations and policies. Federal regulations require that professional services and other non-construction work/purchases funded with CDBG monies generally must be competitively procured.\* Refer to the procurement options summarized later in this chapter to determine which option is most appropriate based on the type of the professional services contract or other non-construction contract.

*\*Exceptions for federal competitive procurement requirements are noted under the sole source procurement option summarized later in this chapter.*

## CONFLICT OF INTEREST

### Applicability

The conflict of interest provision applies to any individual who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of an UGLG, or of any designated public agencies, or sub-recipients. Except for eligible administrative or personnel costs, the general rule for those individuals described above (who exercise or have exercised any functions or responsibilities with respect to CDBG activities and who are in a position to participate in a decision-making process or gain inside information with regard to such activities) is that they **may not**:

- Obtain a financial interest or benefit from the activity;
- Have an interest or benefit from the activity; nor
- Have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder.

This rule also applies during their tenure or for one year thereafter to themselves and to those individuals with whom there is a family or business tie.

To determine if there are any potential conflicts of interest, the UGLG should gather the above information at the point of bid submittal (for construction contracts), proposal submittal (for professional services contracts) or property identification (acquisition/relocation). Potential contractors or sellers should be asked to disclose family or business ties to persons involved with the CDBG project that may be potential conflicts of interest. The *Potential Conflict of Interest Disclosure* form (Attachment 3-B) may be used as a template for preparing a disclosure form. The *24 CFR 570.489(h) Conflict of Interest Clause* (Attachment 3-C) must be included in all bid packets for construction contracts.

### Conflict of Interest Reviews and Exceptions/Waivers

An exception/waiver to the federal conflict of interest provisions may be requested by the UGLG and requires DEHCR approval, and may require HUD approval, depending on the nature of the conflict of interest. Contact the assigned DEHCR Project Representative for further guidance on submitting a request for such exception/waiver. Prior to submitting an exception/waiver request, public disclosure of the potential conflict must be made. A legal opinion must be obtained from the corporate or municipal counsel stating that the interest for which the exemption is sought would not violate state or local law.

The following steps may be used to identify and review potential conflicts of interest, and request an exception/waiver to the federal conflict of interest provisions, if determined necessary:

1. Identify “covered persons” for the CDBG program;
2. Have potential contractors complete a *Potential Conflict of Interest Disclosure* form (Attachment 3-B) or similar document when responding to procurement solicitations (e.g., request for bids [RFB], request for proposals [RFP], request for qualifications [RFQ], etc.) or prior to contracting;

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3. Inform any contractors with a potential conflict of interest that their name will be disclosed at the local Board/Council/Committee meeting;
4. Add “disclosure of potential conflicts of interest” as a discussion item on the Board/Council/Committee meeting agenda (any covered person identified in the disclosure of the potential conflict of interest should not attend this meeting or should recuse herself/himself from voting on a determination regarding the potential conflict of interest);
5. Adhere to the UGLG’s applicable local policies (e.g., ethics and conflict of interest policies related to decision-making, voting, procurement and contracting) in reviewing all potential conflicts of interest;
6. If a contractor has been identified as having a potential conflict of interest, disclose the name of the person and company/firm, and the nature of the potential conflict of interest (family or business tie[s]) applicable to the project;
7. Ask all in attendance at the bid/proposal/contract approval meeting if there are any objections to awarding the contract to the contractor in question, with the objective being to review the potential conflict of interest publicly and determine if there are any objections to awarding the contract;
8. The UGLG’s legal counsel must provide a letter of opinion certifying that the UGLG’s contracting with the entity or person identified as having the potential conflict(s) would not violate state or local law. Refer to the federal regulations [24 CFR 570.489(h)] for guidance on the requirements to request for a waiver to the conflict of interest (Attachment 3-C);
9. If the UGLG’s determination after reviewing the potential conflict of interest and the legal opinion is that no conflict of interest exists, then the UGLG is to submit to DEHCR:
  - a summary on municipal letterhead signed by the chief elected official summarizing the UGLG’s review, determination and basis of the determination regarding the potential conflict of interest;
  - the legal opinion letter from the UGLG’s legal counsel certifying that the UGLG’s contracting with the entity or person identified as having the potential conflict(s) would not violate state or local law;
  - proof of proper notice of the meeting in which the potential conflict of interest will be publicly disclosed and discussed;
  - the agenda and minutes of the board/council/committee meeting in which the potential conflict of interest was disclosed and reviewed;
  - proof of public sharing of the meeting proceedings (e.g., proof of public posting(s) of the meeting minutes.
10. If the UGLG’s determination after reviewing the potential conflict of interest and the legal opinion or DEHCR’s opinion is that a conflict of interest does exist, the UGLG may request a waiver to the federal conflict

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of interest provisions to award the contract. The UGLG must submit to DEHCR:

- a request on municipal letterhead signed by the chief elected official requesting a waiver to the federal conflict of interest provisions, with a summary of the UGLG's review and determination regarding the conflict of interest, and the justification or basis on which the waiver should be allowed, citing all applicable factors for to be considered from the list provided in the federal regulations [24 CFR 570.489(h)(5)] (Attachment 3-C: *Conflict of Interest Clause*).
- the legal opinion letter from the UGLG's legal counsel certifying that the UGLG's contracting with the entity or person identified as having the conflict(s) would not violate state or local law;
- proof of proper notice of the meeting in which the potential conflict of interest will be publicly disclosed and discussed;
- the agenda and minutes of the board/council/committee meeting in which the conflict of interest was disclosed and reviewed; and
- proof of public sharing of the meeting proceedings (e.g., proof of public posting(s) of the meeting minutes).

11. The UGLG should avoid signing the contract(s) in question until the exception/waiver decision has been received from DEHCR (and HUD if applicable).

Please become familiar with the conflict of interest language included in the Code of Federal Regulations before undertaking any projects paid with CDBG funds. For more information, please refer to the *24 CFR 570.489(h) Conflict of Interest Clause* (Attachment 3-C) provided in this chapter.

### IMPORTANT REMINDER!

The UGLG's Chief Elected Official may not receive a CDBG loan or any financial interest from the CDBG activity.

### IN-HOUSE WORK (BY MUNICIPAL EMPLOYEES)

Officials of the UGLG who are acting in their official capacity are considered in-house and are eligible to be compensated for CDBG-related duties if certain conditions are met. For example, if the City Council has officially designated an attorney as City Attorney or an engineer as City Engineer, the individual or firm so designated becomes an official of the city. As an official of the city performing CDBG related duties, his/her legal or engineering service charges are eligible program costs to the extent that:

- They are reasonable for the services provided;



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- They follow an appointment made in accordance with state and local laws; and
- The amount of compensation charged to the program will be based on payrolls documented and provided upon request in accordance with generally accepted practices of state and local governments, such as time sheets and other payroll records.

DEHCR will disallow costs for UGLGs that abuse these in-house provisions. For instance, appointments of City Engineers must not be made for the purpose of selecting an engineer to work on an anticipated CDBG project. The UGLG must show evidence that they have a history of appointment, unrelated to any current or anticipated CDBG project.

Refer to Chapter 8: *Financial Management* of this Handbook for details on in-kind donated goods and services. In-kind donated goods and services are tracked differently than in-house work.

## PROCUREMENT AND CONTRACTING GENERAL PROVISIONS

The federal standards for procurement and contracting are intended to ensure that supplies, equipment, construction, and other services are:

- Obtained as efficiently and economically as possible; and
- Procured in a manner that provides, to the maximum extent practical, open and free competition.

Contract solicitations for goods and/or services must explain all requirements the bidder/offeror must meet for his or her bid/offer to be evaluated by the UGLG. Each solicitation must be based on a clear and accurate description of the material, product, or service to be procured and cannot contain features which unduly restrict competition.

Some of the situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable qualifying requirements on firms;
- Requiring unnecessary experience or excessive bonding;
- Specifying only brand name products, instead of allowing an equal product;
- Non-competitive pricing practices between firms or affiliated companies; and
- Non-competitive awards to consultants on retainer contracts.\*

*\*Non-competitive awards to professional services contractors may be allowed when no CDBG funds will be applied to the costs, subject to compliance with the UGLG's local procurement policy, or when Sole Source requirements listed later in this chapter are met. However,*



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*competitive procurement for all contracting is recommended, even when not required.*

Awards are to be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the UGLG, price and other factors considered, as permitted for the method of procurement being applied. Any and all bids/offers may be rejected when it is in the UGLG's interest to do so. The UGLG must ensure that contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Considerations may include, but are not limited to compliance with regulatory requirements and public policy, contractor integrity, record of past performance, financial capabilities, and technical capabilities.

### DEBARRED AND INELIGIBLE CONTRACTORS

The UGLG must ensure that awards are not made to any party which is debarred or suspended, or is otherwise excluded from or ineligible for, participation in federal assistance programs under Executive Order 12549 "Debarment and Suspension" [24 CFR 85.35]. The UGLG must check the status of all contractors and sub-contractors on the System for Award Management (SAM) at <https://sam.gov/SAM/> prior to the award of any prime contract or sub-contract and prior to the amendment of any prime contract or sub-contract. Debarment checks must be made on the *official* federal SAM website. Private third parties have created sites that look very similar to the <https://sam.gov/SAM/> website but they are not the *official* federal site and are not be used for SAM debarment checks for the CDBG program. The UGLG must also maintain a record of the debarment checks in the CDBG project file.

### USE OF LOCAL, SMALL, MINORITY-OWNED and/or WOMEN-OWNED BUSINESSES

Federal regulations make it very clear that UGLGs should make every effort to use local business firms and contract with small, minority-owned, and women-owned businesses in the procurement process. Specifically, the UGLG must take affirmative steps to use small firms, minority-owned business enterprise (MBE) firms, women-owned business enterprise (WBE) firms, or labor surplus area firms [24 CFR 85.36(e)]. For example, the UGLG should:

- Incorporate such businesses in solicitation lists whenever they are potential sources;
- Ensure that such businesses are solicited when identified as potential sources;
- Divide procurement requirements, when economically feasible, to permit maximum participation of such businesses; and
- Require prime contractors, when sub-contracts are let, to take affirmative steps to select such firms.

Refer to Chapter 6: <i>Equal Opportunity, Fair Housing and Section 3</i> of this Handbook for additional details on MBE/WBE contracting related requirements.
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## USE OF SECTION 3 BUSINESSES

In conformance with requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, the UGLG must award contracts for work to be performed to eligible businesses located in or owned by residents of the distribution area to ensure that employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing [24 CFR 570.607(b)].

Refer to Chapter 6: *Equal Opportunity, Fair Housing and Section 3* of this Handbook for additional details on Section 3 contracting related requirements.

### IMPORTANT REMINDER!

The desire to award contracts to local firms is **NOT** an acceptable justification for avoiding an open and competitive procurement process.

## LOBBYING RESTRICTIONS

In accordance with Section 1352, Title 31, U.S. Code, no CDBG funds may be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than CDBG or other federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the CDBG contract, the UGLG or contractor representative shall complete the federal Standard Form-LLL in accordance with the instructions. This form is provided in this chapter as Attachment 3-E: *Disclosure of Lobbying Activities*, to report any lobbying activity.

The UGLG and all contractors and sub-contractors (including any hired for engineering and grants administration) for the CDBG project must include the language regarding lobbying restrictions (Attachment 3-D: *Lobbying Certification* and Attachment 3-E: *Disclosure of Lobbying Activities*) in all contract documents for all sub-award/sub-contracts at all tiers, and the UGLG and all contractors shall certify and disclose lobbying activities accordingly. Any person who fails to

file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### CONTRACTING FOR PROFESSIONAL SERVICES

#### **Use of One Firm for Grant Administration and Professional Services such as Engineers, Planners or Architects**

The use of a single firm for grant administration and engineering and/or planning professional services is generally acceptable provided that separate procurement processes are conducted for each of the separate services.

However, a firm serving as the Grant Administrator for the UGLG is not allowed to bid on a contract for services if the firm assists the UGLG with preparation of the procurement advertisement or assists in any aspect of the procurement process. Assistance with the procurement process includes, but is not limited to the preparation of advertisements or the evaluation and scoring of bids.

#### **Selection of Engineers, Planners or Administrative Consultants Prior to Grant Award**

Generally, the use of multi-services procurement and contracting is prohibited except:

- When local officials decide to procure the services of an engineer to assist them with both preparation of preliminary engineering plans (which is not grant application preparation) **and** project engineering, in the event their community is selected for grant award;
- When an UGLG wants to conduct one procurement process to cover both grant preparation **and** grant administration; and
- When an UGLG wants to conduct one procurement process to cover both CDBG-Planning grant application preparation **and** CDBG-Planning grant implementation.

Any agreement between the UGLG and the engineer or consultant that includes preliminary and project engineering or grant writing and administration services would have to be contingent upon the award of CDBG funds. The UGLG must meet federal competitive procurement requirements when CDBG funds are being applied to the professional services contract costs.

Additional requirements the UGLG must take into consideration when procuring professional services, include:

- No loss-leader arrangements; and
- Types of professional service(s) needed for the CDBG project (for engineering, grant administration, planning, etc.).

Loss-leader arrangements violate federal regulations which require maximum open and free competition. Professional organizations also consider this practice unethical because it deprives the UGLG of the benefits that can result from competition among competent, professional firms.

### WARNING!

**No loss-leader arrangements:** Federal regulations require maximum open and free competition. Loss-leader arrangements, in which a consultant offers to prepare a grant application or preliminary engineering estimates at reduced rates or at no cost in return for a future contract if the application is funded, are prohibited by federal regulations.

### PROCUREMENT METHOD OPTIONS

Depending on the type of the contract, scarcity of the item or service desired, and the amount of the contract or purchase, four (4) different options for procurement methods are available under the federal regulations:

- Small purchase(s)/simplified acquisition option;
- Competitive sealed bids option;
- Competitive proposals option; and
- Non-competitive proposals/sole source option.

These procurement method options are summarized below. A brief overview of the four (4) options is also presented in Attachment 3-F: *Overview of Procurement Method Options*.

#### **OPTION #1 – SMALL PURCHASE/SIMPLIFIED ACQUISITION OPTION [24 CFR 85.36 (d)(1)]**

DEHCR considers procurement by small purchase (also referred to as simplified acquisition) procedures best suited for obtaining small quantities of supplies.

UGLGs may follow either their local small purchase procurement, state, or the federal policy. If the local policy is used, it must be at least as stringent as the federal or state policy, whichever is more restrictive, as described below.

The **federal** small purchase method may be used for procurement of \$100,000 or less in the aggregate, per 24 CFR 85.36(d)(1). **A procurement of more than \$100,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach.**

The **state** small purchase method may be used for procurement of \$50,000 or less in the aggregate. **A procurement of more than \$50,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach.**

### WARNING!

The State of Wisconsin's procurement limit for small purchase is \$50,000. The UGLG should follow this stricter state regulation, in lieu of the \$100,000 federal policy.

In the small purchase method, competition must be sought through oral or written price quotations. **The UGLG must document the receipt of at least three (3) price or rate quotations from qualified vendors.** The UGLG's small purchase procurement process documentation should:

- Identify in writing the item(s) to be procured;
- Solicit in writing, written quotes from at least three qualified bidders.\* Verbal quotes, documented by the UGLG in writing, are acceptable for purchases of less than \$500;
- Identify the lowest responsible bidder;
- Notify each bidder in writing as to whether or not they are the apparent low bidder; and
- Execute a contract with the lowest responsible bidder.

*\*The request for quotes must include enough detail to solicit responses that will provide adequate information to verify that the quotes are for comparable products or services.*

### **OPTION #2 – COMPETITIVE SEALED BID OPTION [24 CFR 85.36 (d)(2)]**

DEHCR considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials.

This method of selection can be made principally on the basis of price (fixed price contract using lump sum or unit price). Requirements for using the Competitive Sealed Bid method are as follows:

- The UGLG shall advertise the invitation for bids in publications of general circulation (i.e. newspapers, on-line bidding opportunities), solicit bids from an adequate number of known suppliers, providing them sufficient time to respond prior to bid opening;
- The invitation for bids shall include:
  - complete and accurate specifications
  - pertinent attachments, and
  - clearly defined items or services needed, in sufficient detail for the bidders to properly respond;

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- Bids shall be opened publicly at the time and place stated in the invitation for bids;
- The UGLG shall receive at least two (2) or more responsible bids for each procurement transaction; and
- If awarded, a firm fixed-price contract award shall be made in writing to the lowest responsible bidder. The UGLG can, however, decide not to make the award to any of the bidders. The UGLG may re-bid the project under certain conditions (i.e. bids are not responsible, or the proposals do not contain information necessary to evaluate the bids).

### **NOTICE REGARDING BIDDING FOR MULTIPLE UGLG PROJECTS:**

An UGLG may bid the CDBG project in conjunction with another non-CDBG project for economy and efficiency purposes, contingent upon the CDBG project components being clearly defined separately and the CDBG component costs being clearly distinguishable and separate from the non-CDBG component costs in the bid. Future pay applications/invoices from the contractor(s) awarded contract(s) must have CDBG project activities and costs clearly separated from the non-CDBG project activities and costs on the pay application/invoices. All contract regulatory language and attachments required for bidding for CDBG projects must be included in the bid packet.

Refer to Chapter 7: *Labor Standards* of this Handbook for additional guidance on procurement and contracting for construction contracts.

### **OPTION #3 – COMPETITIVE PROPOSALS OPTION [24 CFR 85.36(d)(3)]**

DEHCR considers this procurement method best suited to obtaining professional services.

This is normally conducted with more than one source submitting an offer, which results in either a fixed-price or not-to-exceed type contract being awarded. It is generally used when conditions are not appropriate for the use of sealed bids. This method has two sub-parts:

1. The **Request for Proposal** (RFP), and
2. The **Request for Qualifications** (RFQ).

The review process for both statements of qualification and proposals should be thorough, uniform, and well documented. DEHCR prefers that this review be conducted by a committee, council or board which, to the extent possible, includes persons with technical skills relevant to the requests being sought.

Reviewers should have no potential conflicts of interest with the firms or individuals under review, such as family relationships, close friendships, or business partnerships. Refer to 24 CFR 85.36(b) procurement standards, which in part states: *UGLGs and sub-Grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the UGLG or sub-Grantee shall participate in the selection, or awarding, or*

*administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.*

**Evaluation criteria** for reviewing competitive proposals should take into consideration:

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

### RECOMMENDED BEST PRACTICE

The above-listed evaluation criteria can be scored using a weighted point system based on their importance. A side-by-side comparison of the numerical scores will determine which proposal receives the award.

### Request for Proposal (RFP)

The following requirements must be met:

- The *Request for Proposals* (RFP) must clearly and accurately state technical requirements for goods and services required. It should specify scope of services and the type of contract to be provided – cost reimbursement (also known as cost plus fixed fee), fixed price or per diem contract;
- The RFP also should specify the cost and pricing data required to support the proposed cost, anticipated start and completion dates, and evaluation criteria to be used in ranking proposals. The UGLG should make available pertinent materials, such as reports, maps and site plans to assist the bidders in preparing proposals. For complicated projects, the UGLG may wish to conduct a pre-bid conference to discuss the project, describe available materials and explain relevant CDBG contract regulations;
- The UGLG shall publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;
- Proposals shall be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement;
- The UGLG shall conduct a technical evaluation of the submitted proposals to identify the responsible offers; and
- The UGLG shall award the contract to the most responsive and responsible contractor after price and other factors are considered



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through scoring the proposals according to predetermined evaluation criteria. The successful proposal/offer must clearly be the most advantageous source of the goods and services.

### **Request For Qualifications (RFQ)**

For procurement involving architectural or engineering services, the UGLG may use the *Request for Qualifications* (RFQ) competitive proposal procedure whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **In these instances, price is NOT used as a selection factor.** The UGLG should review and rank every statement of qualifications received.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, this process is repeated with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The UGLG shall document the basis for its determination of the most qualified competitor and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may not be used to purchase anything other than architectural and engineering services [24 CFR 85.36(d)(3)(v)].

Note: The federal rule cited in the previous paragraph, relating to the procurement of architectural and engineering (A/E) services, is quoted below verbatim:

*UGLGs and sub-Grantees 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. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.*

This language means that the Qualifications-based Procurement Method can be used only for A/E services. If an RFQ is issued, the competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

In addition, federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by federal statutes, due to the resulting geographical restrictions unnecessarily placed upon open competition. However, in procuring architectural and engineering services, geographic location is permitted as a selection criterion provided this criterion results in an appropriate number of qualified firms still being allowed to submit their qualifications for review [24 CFR 85.36(c)(2)].

### WARNING!

A *Request For Qualifications* (RFQ) cannot be used to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

### OPTION #4 – NON-COMPETITIVE PROPOSALS/SOLE SOURCE OPTION [24 CFR 85.36 (d)(4)]

This method may be used only under very limited circumstances and **the UGLG must obtain DEHCR approval before using this method**. When requesting approval to use this method, the UGLG will have to demonstrate that another method of procurement was not feasible because:

- The item or service was only available from a single source;
- A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
- Competition was determined to be inadequate after solicitation of proposals from a number of sources.

### SUB-RECIPIENTS

A sub-recipient is a public or private non-profit agency or organization receiving CDBG funds from a UGLG or another sub-recipient to undertake eligible activities. Another way to say this is that sub-recipients are organizations that are **provided** CDBG funds by an UGLG **for their use** in carrying out agreed-upon, eligible activities. Sub-recipients are subject to all the same procurement requirements as the UGLG that was awarded the CDBG funds.

### WARNING!

The UGLG **must** consult with DEHCR prior to entering into an agreement with a sub-recipient.

### STARTING THE WORK

Refer to Chapter 8: *Financial Management* in this Handbook and the terms set forth in the UGLG's *Grant Agreement* with DEHCR for specifications for starting work and incurring costs for the CDBG project.

# BCD CDBG Implementation Handbook

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## RECORDS AND FILES

According to 24 CFR 85.36(b)(9), the UGLG shall maintain records to detail the significant history of a procurement and contracting.

The UGLG must establish procurement and contracting files and monitor the contracts to assure that the contracts are completed in a satisfactory and timely manner.

The Procurement and Contracting records\* must contain (if applicable):

- UGLG's local procurement policy;
- Descriptions of methods used to select consultants and contractors [e.g., Small Purchase/Simplified Acquisition, *Request for Bids* (RFB), *Request of Qualifications* (RFQ), *Request of Proposals* (RFP), Sole Source];
- Copies of quote request, RFB, RFQ and/or RFP documents used for soliciting responses from contractors/service providers, and related procurement correspondence/communications;
- Advertisement(s) for bids and/or proposals and proof of publication (as applicable);
- Quotes/bids/qualifications/proposals received and evaluation method(s) (e.g., quote review summary, bid tabulation detailed summary, qualifications review summary, proposal evaluation scoring summary, etc.);
- Cost and pricing data;
- Record of the approval by the governing body of the quote/bid/qualifications/proposal accepted/selected (as applicable);
- Contract(s) for goods/services;
- Conflict of Interest related documentation (e.g., contractors' potential conflict of interest disclosure statements, local policy regarding conflicts of interest, UGLG public disclosure and review records [if applicable], legal opinion(s) [if applicable], related correspondence to DEHCR [if applicable], request(s) for waiver [if applicable], etc.);
- Records of <https://sam.gov/SAM/> debarment searches;
- Signed Lobbying Certifications for all contractors; and
- Completed Disclosure of Lobbying Activities forms (as applicable).

*\*Contracting documents related to construction may be maintained in the Labor Standards files established for contractors and sub-contractors.*

The UGLG may be asked to provide procurement documentation related to any or all contractors, suppliers and service providers applicable to the project at any time. Improperly procured services or goods will be deemed ineligible costs and DEHCR may deny payment or prohibit the costs from being counted towards the UGLG's match funding for the CDBG project.

# BCD CDBG Implementation Handbook

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## RELEVANT LAWS

Procurement laws governing public construction in Wisconsin are as follows:

- Wisconsin State Statutes, 66.0901 (general), 59.03-04, 59.06 (county), 60.47 (town), 61.50 and 61.54 through 61.57 (village), or 62.15 (cities) concerning advertising and bidding of public projects.

Procurement and contracting laws governing federal CDBG projects are as follows:

- Code of Federal Regulations, 24 CFR 85.36, 24 CFR 570.489, 24 CFR 570.503, 24 CFR 570.607, 24 CFR 570.609, 24 CFR 570.610, 24 CFR 570.611

Refer to Chapter 6: *Equal Opportunity, Fair Housing & Section 3* and Chapter 7: *Labor Standards* of this Handbook for additional relevant laws for contracting.

## CONTRACT LANGUAGE AND FORMS

Contracts are to include the language and forms as indicated in the following table.

# BCD CDBG Implementation Handbook

<b>CDBG Implementation Handbook Attachments / Federal Language Requirements for Contracts Executed for a CDBG Project</b>	
<b>Construction Contracts of \$10,000 or LESS</b>	<b>Construction Contracts of GREATER Than \$10,000</b>
<ul style="list-style-type: none"> <li>• Attachment 3-B* [Conflict of Interest Disclosure Form]</li> <li>• Attachment 3-C [24 CFR 570.489(h) Conflict of Interest Clause]</li> <li>• Attachment 3-D [Lobbying Certification Form]</li> <li>• Attachment 3-E (if applicable) [Disclosure of Lobbying Activities Form]</li> <li>• Attachment 6-B [Section 3 Contract Language Requirements]</li> <li>• Attachment 7-B** [Davis-Bacon and Related Acts (DBRA)]</li> <li>• Attachment 7-G [Federal Labor Standards Provisions (4010)]</li> <li>• Attachment 7-I* [Pre-Construction Meeting Items to be Discussed]</li> <li>• Attachment 7-J* [Pre-Construction Checklist for Contractors]</li> <li>• Applicable Davis-Bacon/Federal Wage Decision(s)**</li> </ul>	<ul style="list-style-type: none"> <li>• Attachment 3-B* [Conflict of Interest Disclosure Form]</li> <li>• Attachment 3-C [24 CFR 570.489(h) Conflict of Interest Clause]</li> <li>• Attachment 3-D [Lobbying Certification Form]</li> <li>• Attachment 3-E (if applicable) [Disclosure of Lobbying Activities Form]</li> <li>• Attachment 6-A [Equal Opportunity Clause (EO 11246)]</li> <li>• Attachment 6-B [Section 3 Contract Language Requirements]</li> <li>• Attachment 6-C [Affirmative Action Requirements (EO 11246)]</li> <li>• Attachment 6-D [Federal Equal Employment Opportunity Clauses Construction Contract Specifications (EO 11246)]</li> <li>• Attachment 7-B** [Davis-Bacon and Related Acts (DBRA)]</li> <li>• Attachment 7-G [Federal Labor Standards Provisions (4010)]</li> <li>• Attachment 7-I* [Pre-Construction Meeting Items to be Discussed]</li> <li>• Attachment 7-J* [Pre-Construction Checklist for Contractors]</li> <li>• Attachment 7-R [MBE/WBE/DBA Web Resources]</li> <li>• Applicable Davis-Bacon/Federal Wage Decision(s)**</li> </ul>
<b>Professional Services and Other Non-Construction Contracts Funded in Whole or In Part with CDBG</b>	<b>Professional Services and Other Non-Construction Contracts NOT Funded with CDBG</b>
<ul style="list-style-type: none"> <li>• Attachment 3-B* [Conflict of Interest Disclosure Form]</li> <li>• Attachment 3-C [24 CFR 570.489(h) Conflict of Interest Clause]</li> <li>• Attachment 3-D [Lobbying Certification Form]</li> <li>• Attachment 3-E (if applicable) [Disclosure of Lobbying Activities Form]</li> <li>• Attachment 6-B [Section 3 Contract Language Requirements]</li> </ul>	<ul style="list-style-type: none"> <li>• Attachment 3-B* [Conflict of Interest Disclosure Form]</li> <li>• Attachment 3-C [24 CFR 570.489(h) Conflict of Interest Clause]</li> <li>• Attachment 3-D [Lobbying Certification Form]</li> <li>• Attachment 3-E (if applicable) [Disclosure of Lobbying Activities Form]</li> </ul>
<p><i>*Denotes the Attachment or similar form is recommended to be included in the contract, but it is not required. All other items listed in the category must be included in the contract (cannot be by reference only) unless otherwise noted.</i></p> <p><i>**Required to be in the contract only if Davis-Bacon and Related Acts (DBRA) are applicable to the project.</i></p>	

### ATTACHMENTS

Attachments for this chapter are listed below.

ATTACHMENT 3-A1:	SAMPLE PROCUREMENT POLICY #1
ATTACHMENT 3-A2:	SAMPLE PROCUREMENT POLICY #2
ATTACHMENT 3-B:	POTENTIAL CONFLICT OF INTEREST DISCLOSURE (TEMPLATE)
ATTACHMENT 3-B1:	POTENTIAL CONFLICT OF INTEREST DISCLOSURE (SAMPLE)
ATTACHMENT 3-B2:	POTENTIAL CONFLICT OF INTEREST DISCLOSURE (INSTRUCTIONS)
ATTACHMENT 3-C:	24 CFR 570.489(h) CONFLICT OF INTEREST CLAUSE
ATTACHMENT 3-D:	LOBBYING CERTIFICATION (TEMPLATE)
ATTACHMENT 3-D1:	LOBBYING CERTIFICATION (SAMPLE)
ATTACHMENT 3-D2:	LOBBYING CERTIFICATION (INSTRUCTIONS)
ATTACHMENT 3-E:	DISCLOSURE OF LOBBYING ACTIVITIES FORM (TEMPLATE)
ATTACHMENT 3-F:	OVERVIEW OF PROCUREMENT METHOD OPTIONS

## ATTACHMENT 3-A1: SAMPLE PROCUREMENT POLICY #1

The following represents the procurement policy of the City of Lake Manitoc:

1. Supplies required for operation of municipal offices and departments shall be purchased, as required, in accord with a purchase order issued by the respective department head. It is required that purchases be made from suppliers located in the community unless the price is not competitive or comparable to that of non-local suppliers.
2. Purchase of outlay items, such as vehicles and other equipment, shall be subject to competitive bidding. The department requesting purchase of these items shall make the request based on specifications. The responsible department head, along with the respective City Council committee, will determine which bid will be most advantageous to the community and make recommendation thereon to the full City Council. Bids may be invited by letter and/or by advertisement in the local newspaper.
3. Public Works Projects exceeding the Wisconsin Statutory amount of \$25,000 will be bid in accord with Wisconsin State Statutes. Specifications and/or plans and bid documents will be furnished to all requesting the same. Notice of bid taking shall be published in the local newspaper, Western Builder and Builders Exchange releases. All bids timely received will be opened and read at a pre-specified time and place open to the public. Bids will be received and recommendation thereon will be made to the City Council. The contract will be awarded to the responsible bidder submitting the lowest bid. Force account projects are exempt from this policy.
4. Professional Services contracts must be selected through a competitive process or thorough departmental review. Architectural and engineering services contracts exceeding \$100,000 must be selected through a Request for Qualifications (RFQ) process. Other professional services contracts exceeding \$25,000, excluding auditing and accounting services contracts, must be selected through a Request for Proposals (RFP) process. ALL professional services contracts must be approved by the City Council.

*Andrea Devins*

Andrea Devins, Mayor

September 27, 2018

Date

***[This sample procurement policy is provided as an example of a municipality's procurement policy only, and is not intended to represent, nor does it represent federal and state CDBG procurement requirements. The Unit of General Local Government (UGLG) must have a written procurement policy in place, which includes the UGLG's processes and requirements for procurement and contracting transactions, and is prepared to meet the UGLG's specific needs and requirements. When federal and state procurement requirements apply, the UGLG must adhere to its local policy as well as applicable federal and state requirements.]***



## ATTACHMENT 3-A2: SAMPLE PROCUREMENT POLICY #2

It shall be the policy that all supplies, materials, and/or services purchased by the Village of Atoka Valley shall be obtained in a manner that is as efficient and economical as possible and procured in a manner that provides to the maximum extent practical, open and free competition.

### **Operating Supplies and Materials**

1. All purchases of operating supplies and materials shall require a purchase order issued from the Village Clerk. Whenever practical the employee and/or Department Head requesting the purchase shall acquire multiple quotes to ensure that the items are being purchased in the most economic manner. Purchases over \$500 shall require a minimum of three written price quotations. In the event that three quotes cannot be provided sufficient documentation explaining the limited number of suppliers shall be submitted.
  - a. Regular on-going budgetary purchases may be acquired with one annual purchase order with quotes received annually.
2. All purchases exceeding \$1,500 will require Village Board approval unless in the case of a true bona-fide emergency.

### **Professional Services**

1. Architectural and Engineering professional services shall be acquired through a Qualifications Based Selection Process whereby a firm or individual's qualifications are the primary determinant in the execution of a contract with said firm or individual.
  - a. Only after the firm has been selected may a cost be asked of the selected firm/individual. In the event that a fair and reasonable price cannot be negotiated the UGLG must select the next highest ranked firm/individual to negotiate with. This will continue until such negotiations result in an executed contract.
2. Other professional services shall be acquired through a process approved by the department head. Contracts exceeding \$5,000 must be approved by the Village Board prior to executing the contract.

### **Capital Projects/Outlay**

1. Purchase of outlay items, such as vehicles and other equipment shall be subject to competitive bidding. The Village shall issue bid specifications. The Village will select the most responsible and responsive bid price for said items.
2. Public Works Projects exceeding the Wisconsin Statutory amount of \$25,000 will be bid in accordance with Wisconsin State Statutes. Specifications and/or plans and bid documents will be furnished to all requesting same. Notice of bid taking shall be published in the local newspaper of record and an applicable Builders Journal. All bids shall be received by the designated date and time in the mandatory format. All bids will be opened and read at a meeting open to the public. Bids will be reviewed and acted upon by the Village Board. Contracts will be awarded to the most responsible and responsive bidders.
3. The Village maintains the right to reject any and all bid proposals.

# BCD CDBG Implementation Handbook

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## General Provisions

1. The Village of Atoka Valley shall make every effort possible to use local business firms and contract with small, minority-owned, and women-owned businesses in the procurement process. The UGLG shall incorporate these businesses in the solicitation lists, divide procurement requirements when economically feasible to permit maximum participation of such businesses, and require prime contractors, when sub-contractors are used to take affirmative steps to select such firms.
2. The UGLG shall ensure that awards are not made to any party which is debarred or suspended, or is otherwise excluded from or ineligible for participation in federal assistance programs, when federal funds are utilized for a project.

Larry Pike

Larry Pike, Village President

November 8, 2018

Date

Lynda Bloome

Lynda Bloome, Village Clerk

November 8, 2018

Date

***[This sample procurement policy is provided as an example of a municipality's procurement policy only, and is not intended to represent, nor does it represent federal and state CDBG procurement requirements. The Unit of General Local Government (UGLG) must have a written procurement policy in place, which includes the UGLG's processes and requirements for procurement and contracting transactions, and is prepared to meet the UGLG's specific needs and requirements. When federal and state procurement requirements apply, the UGLG must adhere to its local policy as well as applicable federal and state requirements.]***

**ATTACHMENT 3-B: POTENTIAL CONFLICT OF INTEREST  
DISCLOSURE (TEMPLATE)**

<b>Division of Energy, Housing and Community Resources (DEHCR)</b> <u>Community Development Block Grant – Potential Conflict of Interest Disclosure</u>								
<b>POTENTIAL CONFLICT OF INTEREST DISCLOSURE</b>								
<p style="text-align: center;">&lt;Insert Title of Project&gt; &lt;Insert Municipality Name, e.g. City of Yourville&gt;</p> <p style="text-align: center;">Do you have family or business ties to any of the people listed below? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please check the box next to the name(s) of the individual(s) and describe the relationship in the space provided below:</p> <p><u>ELECTED OFFICIALS:</u></p> <p><input type="checkbox"/> &lt;INSERT FULL NAME AND TITLE OF CHIEF ELECTED OFFICIAL&gt; <input type="checkbox"/> &lt;INSERT FULL NAME AND TITLE OF OTHER ELECTED OFFICIAL&gt; <input type="checkbox"/> &lt;INSERT FULL NAME AND TITLE OF OTHER ELECTED OFFICIAL&gt;</p> <p><u>&lt;INSERT MUNICIPALITY TYPE&gt; ADMINISTRATION, DEPARTMENT HEADS AND LEGAL COUNSEL:</u></p> <p><input type="checkbox"/> &lt;INSERT FULL NAME AND TITLE&gt; <input type="checkbox"/> &lt;INSERT FULL NAME AND TITLE&gt; <input type="checkbox"/> &lt;INSERT FULL NAME AND TITLE&gt;</p> <p><u>ENGINEERING AND CONSULTING FIRM(S):</u></p> <p><input type="checkbox"/> &lt;INSERT FULL NAME, TITLE, AND BUSINESS/FIRM NAME&gt; <input type="checkbox"/> &lt;INSERT FULL NAME, TITLE, AND BUSINESS/FIRM NAME&gt; <input type="checkbox"/> &lt;INSERT FULL NAME, TITLE, AND BUSINESS/FIRM NAME&gt;</p> <p><b>Description of Relationship(s):</b> Please Note: The name of any bidder with a potential conflict of interest will be disclosed at the &lt;Insert Governing Body Name, e.g., City Council, Village or Town Board&gt; meeting in which bids are discussed. Potential conflicts of interest will be reviewed in accordance with 24 CFR 570.489(h).</p> <table border="0" style="width: 100%;"><tr><td style="width: 33%; border-bottom: 1px solid black;">Printed Name of Individual</td><td style="width: 33%; border-bottom: 1px solid black;">Title</td><td style="width: 33%; border-bottom: 1px solid black;">Signature</td></tr><tr><td style="border-bottom: 1px solid black;">Name of Business/Firm/Company</td><td colspan="2" style="border-bottom: 1px solid black;">Date Signed [MM/DD/YYYY]</td></tr></table> <p style="font-size: small;">Potential Conflict of Interest Disclosure <span style="float: right;">Page 1 <span style="margin-left: 100px;">Revised: August 31, 2017</span></span></p>			Printed Name of Individual	Title	Signature	Name of Business/Firm/Company	Date Signed [MM/DD/YYYY]	
Printed Name of Individual	Title	Signature						
Name of Business/Firm/Company	Date Signed [MM/DD/YYYY]							

**ATTACHMENT 3-B1: POTENTIAL CONFLICT OF INTEREST  
DISCLOSURE (SAMPLE)**

<b>Division of Energy, Housing and Community Resources (DEHCR)</b> <u>Community Development Block Grant – Potential Conflict of Interest Disclosure</u>		
<b>POTENTIAL CONFLICT OF INTEREST DISCLOSURE</b>		
<b>Brick Street Infrastructure Improvements Village of Emerald City</b>		
Do you have family or business ties to any of the people listed below? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
If yes, please check the box next to the name(s) of the individual(s) and describe the relationship in the space provided below:		
<u>ELECTED OFFICIALS:</u>		
<input type="checkbox"/>	Barbara Cordry, Village President	<b>SAMPLE</b>
<input type="checkbox"/>	Russell Wellington, Board Member	
<input type="checkbox"/>	Gabriel Collins, Board Member	
<input type="checkbox"/>	Charlie Bien, Board Member	
<input type="checkbox"/>	Mo Letters, Board Member	
<input type="checkbox"/>	Dorothy Baum, Clerk/Treasurer/Board Secretary	
<u>VILLAGE ADMINISTRATION, DEPARTMENT HEADS AND LEGAL COUNSEL:</u>		
<input type="checkbox"/>	James Haggerty, Village Administrator	
<input type="checkbox"/>	Peter Harper, Village Attorney	
<input type="checkbox"/>	Michael Carter, Director, Department of Public Works	
<u>ENGINEERING AND CONSULTING FIRM(S):</u>		
<input type="checkbox"/>	Celeste Middleton, CEO, Charles Dark Engineering	
<b>Description of Relationship(s):</b>		
<b>Please Note: The name of any bidder with a potential conflict of interest will be disclosed at the Emerald City Village Board meeting in which bids are discussed. Potential conflicts of interest will be reviewed in accordance with 24 CFR 570.489(h).</b>		
Clive Dillon	President	<i>Clive Dillon</i>
Printed Name of Individual	Title	Signature
Bertos Construction Company		January 27, 2018
Name of Business/Firm/Company		Date Signed [MM/DD/YYYY]
Attachment 3-B: Potential Conflict of Interest Disclosure Page 1 Revised: August 31, 2017		

### **ATTACHMENT 3-B2: POTENTIAL CONFLICT OF INTEREST DISCLOSURE (INSTRUCTIONS)**

The conflict of interest provision applies to any individual who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a Unit of General Local Government (UGLG), or of any designated public agencies, or sub-recipients. UGLGs are required to have measures in place to identify and review potential conflicts of interest for contracting for the CDBG project. The *Disclosure of Potential Conflict of Interest* form may be used as part of the process.

1. Enter the title of the CDBG project and the name of the UGLG.
2. Check the appropriate box regarding the contractor's relationship (family and/or business) with the individuals listed.
3. *Elected Officials*: The bid recipient/UGLG must enter the names and titles of all elected officials involved in making decisions affecting the CDBG project. This should include the chief elected official as well as elected members of the governing body, and other elected officials (e.g. municipal Clerk/Treasurer, etc.). The Bidder must note if the business has any family or business ties with any of the listed elected officials and briefly describe the relationship.
4. *Administration, Department Heads and Legal Counsel*: The bid recipient/UGLG must enter the names and titles of any appointed officials involved in making decisions affecting the CDBG project. The Bidder/contractor must note if the business has any family or business ties with any of the listed appointed officials and briefly describe the relationship.
5. *Professional Services*: If the UGLG has contracted for professional services such as engineering, grant administration or planning, then the primary contact's name, title and firm name must be listed. The bidder/contractor must note if the business has any family or business ties with any of the listed professional services firms and briefly describe the relationship.
6. *Potential Conflict of Interest Review*: Enter the location, date and time of the meeting in which the review of any potential conflicts of interests will occur.
7. The contractor is to sign and date the *Potential Conflict of Interest Disclosure* form and submit the form to the bid recipient/UGLG as part of the bid or proposal submittal.
8. The UGLG is to maintain documentation of measures in place and any efforts made to identify and review potential conflicts of interests, which may include signed *Potential Conflict of Interest Disclosure* forms.

**ATTACHMENT 3-C: 24 CFR 570.489(h) CONFLICT OF INTEREST  
CLAUSE**

**Code of Federal Regulations Title 24 570.489(h) Program  
administrative requirements**

**(h) Conflict of interest:**

*(1) Applicability. (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and sub-recipients, the conflict of interest provisions in paragraph (g) of this section shall apply.*

*(ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its sub-recipients, to individuals, businesses and other private entities.*

*(2) Conflicts prohibited. Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.*

*(3) Persons covered. The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or sub-recipients which are receiving CDBG funds.*

*(4) Exceptions: Thresholds requirements. Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the state's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the state or unit of general*



*local government, as appropriate, has provided the following:*

*(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and*

*(ii) An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.*

*(5) Factors to be considered for exceptions. In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:*

*(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;*

*(ii) Whether an opportunity was provided for open competitive bidding or negotiation;*

*(iii) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;*

*(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;*

*(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;*

*(vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and*

*(vii) Any other relevant considerations.*



**ATTACHMENT 3-D: LOBBYING CERTIFICATION (TEMPLATE)**

<b>Division of Energy, Housing and Community Resources</b> <u>Lobbying Certification</u>		
GRANTEE/UGLG NAME: _____ DEHCR GRANT AGREEMENT #: _____		
<b>LOBBYING CERTIFICATION</b>		
<b>FROM THE</b> <input type="checkbox"/> Municipality/UGLG: _____ <input type="checkbox"/> Contractor/Sub-Contractor <input type="checkbox"/> Other: _____		
The undersigned certifies, to the best of his/her knowledge and belief, that:		
<ol style="list-style-type: none"><li>1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.</li><li>2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.</li><li>3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.</li></ol>		
<p>This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
_____ <i>Name of Municipality/UGLG/Business/Firm</i>		
_____ <i>Signature of the Chief Elected Official, Owner, or Chief Executive Officer</i>	_____ <i>Title</i>	_____ <i>Date Signed</i>
_____ <i>Printed Name of the Chief Elected Official, Owner, or Chief Executive Officer</i>		
<i>Lobbying Certification</i>		
Revised: August 31, 2017		

**ATTACHMENT 3-D1: LOBBYING CERTIFICATION (SAMPLE)**

**Division of Energy, Housing and Community Resources**

Lobbying Certification

GRANTEE/UGLG NAME: Village of Burkittsville

DEHCR GRANT AGREEMENT #: PF17-99

SAMPLE

**LOBBYING CERTIFICATION**

**FROM THE**

☐ Municipality/UGLG: \_\_\_\_\_  
☒ Contractor/Sub-Contractor  
☐ Other: \_\_\_\_\_

The undersigned certifies, to the best of his/her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Vanir Construction

Name of Municipality/UGLG/Business/Firm

Harley Jorgeon

Signature of the Chief Elected Official, Owner, or Chief Executive Officer

Harley Jorgeon

Printed Name of the Chief Elected Official, Owner, or Chief Executive Officer

Owner

Title

01/10/18

Date Signed

Attachment 3-D: Lobbying Certification

Revised: August 31, 2017

### ATTACHMENT 3-D2: LOBBYING CERTIFICATION (INSTRUCTIONS)

Lobbying certifications must be obtained from the UGLG, all prime contractors, all sub-contractors and any firms hired for engineering services or grant administration.

1. Enter the name of the UGLG and the DEHCR Grant Agreement # in the space provided.
2. Check the appropriate box for the entity signing the *Lobbying Certification* form. Enter the name of the UGLG in the space provided if applicable. Check "Other" if the form is for a firm providing engineering or grant administration services and enter either "engineering" or "grant administration" in the space provided.
3. Enter the name of the UGLG or firm along with the name and title of individual signing the form.
4. Sign and date the form.
5. Place signed and dated *Lobbying Certifications* in the project's Labor Standards file.
6. Send a copy of all signed *Lobbying Certifications* to the assigned DEHCR Project Representative.

Email: Assigned Project Representative or [DOACDBG@wisconsin.gov](mailto:DOACDBG@wisconsin.gov)

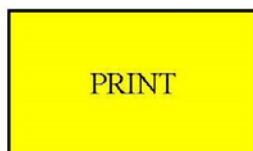
Mail: DEHCR Project Representative  
Wisconsin Department of Administration  
Division of Energy, Housing and Community Resources  
Bureau of Community Development, 9<sup>th</sup> Floor  
P.O. Box 7970  
Madison, WI 53707-7970

# BCD CDBG Implementation Handbook

## ATTACHMENT 3-E: DISCLOSURE OF LOBBYING ACTIVITIES FORM (TEMPLATE)

(Fillable PDF form found at <https://www.hudexchange.info/resource/308/hud-form-sflll/> )

DISCLOSURE OF LOBBYING ACTIVITIES		Approved by OMB 0348-0046
Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure.)		
<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: _____  Congressional District, if known: 4c	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known: _____	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):	<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):	
<div style="text-align: center; font-size: 2em; opacity: 0.5;">TEMPLATE</div>		
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
<b>Federal Use Only:</b>		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)





# BCD CDBG Implementation Handbook

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## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

## ATTACHMENT 3-F: OVERVIEW OF PROCUREMENT METHOD OPTIONS

### Overview of Procurement Method Options Permitted in Accordance with 24 CFR 85.36(d)

Small Purchase/ Simplified Acquisition	Competitive Sealed Bid	Competitive Proposal	Non-competitive Proposal / Sole-Source
<ul style="list-style-type: none"> <li>• Provision of 24 CFR 85.36(d)(1)</li> <li>• Allowed for contracts \$50,000 or less (\$25,000 or less for construction contracts)</li> <li>• Typically for small quantity of supplies or other small contracts</li> <li>• Written quotes from a minimum of 3 providers required</li> <li>• Solicit in writing; quotes submitted in writing (Exception for contracts &gt;\$500: may be obtained and recorded by solicitor)</li> <li>• Select lowest responsible quote</li> <li>• Inform all responders in writing of decision/selection</li> <li>• May require approval by governing body (subject to local procurement policy requirements)</li> </ul>	<ul style="list-style-type: none"> <li>• Provision of 24 CFR 85.36(d)(2)</li> <li>• Required for contracts &gt;\$50,000 (&gt;\$25,000 construction)</li> <li>• For construction contracts; other large contracts or large quantity of supplies</li> <li>• Principally based on price; fixed-price contract</li> <li>• Open public bidding required: public advertisement, adequate time to respond; bids opened publicly</li> <li>• Receive 2 or more responsible bids</li> <li>• Award in writing to lowest responsible bidder</li> <li>• Approval by governing body required</li> </ul>	<ul style="list-style-type: none"> <li>• Provision of 24 CFR 85.36(d)(3)</li> <li>• Most appropriate for professional services</li> <li>• Request for Qualifications [RFQ] (permitted for engineering/architectural services only) or Request for Proposals [RFP]</li> <li>• Use pre-established evaluation criteria/scoring method</li> <li>• Committee review/evaluation to select provider</li> <li>• Most qualified competitor selected; subject to negotiation of compensation</li> <li>• Awarded as fixed price or not-to-exceed contract</li> <li>• May require approval by governing body (subject to local procurement policy requirements)</li> </ul>	<ul style="list-style-type: none"> <li>• Provision of 24 CFR 85.36(d)(4)</li> <li>• Solicitation from one (1) source</li> <li>• Generally prohibited for CDBG projects</li> <li>• May be allowed under certain circumstances (e.g., under urgency or limited supplier provisions within the Code of Federal Regulations)</li> <li>• DOA-DEHCR approval of method required before contracting</li> </ul>

ADDITIONAL NOTES: (optional)