

## PROCUREMENT PROCEDURES AND CODE OF CONDUCT

The Nebraska will in all cases of procurement for professional services, construction services and materials needed for Community Development Block Grant (CDBG) Programs adhere to Code of Federal Regulation 2 C.F.R. Section 200.320 or current state statutes; in all cases the stricter shall apply. City/Village/County is responsible for understanding and complying with federal or state requirements located within the original source. The following procedures summarize said laws and regulations.

A. Procurement shall be made by one of the following methods:

- 1) Micro Purchase Procedures [2 C.F.R. Section 200.320 (a)(1)] – This method will generally be used to obtain very small quantities of supplies. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see 2 C.F.R. Section 200.1), currently set at \$10,000 except as otherwise discussed in the regulation set at 48 C.F.R. part 2, subpart 2.1. To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
- 2) Small Purchase Procedures [2 C.F.R. Section 200.320 (a)(2)] – This method will generally be used to obtain small quantities of supplies. Procurement by small purchase is the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold (see 2 C.F.R. Section 200.1) currently set at \$250,000, except as otherwise discussed in the regulation set at 48 C.F.R. part 2, subpart 2.1. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.
- 3) Sealed Bids [2 C.F.R. Section 200.320 (b)(1)] - This method will generally be used to obtain contractors for construction projects and for large quantities of goods or materials. Procurement by sealed bids is a procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
- 4) **Proposals [2 C.F.R. Section 200.320 (b)(2)] - This method will generally be used to obtain professional services.** Procurement by proposal is a procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. This method has two sub-parts—the Request for Proposal and the Request for Qualifications.

Request for Proposals – Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered.

Request for Qualifications - The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of architectural/engineering professional services. It cannot be used to purchase other types of services though architectural/engineering firms that are a potential source to perform the proposed effort.

- 5) Non-Competitive Procurement [2 C.F.R. Section 200.320 (c)] – This method will only be used after approval from the Department of Economic Development. When requesting permission to use this method, the non-Federal entity will have to show that another method of procurement was not feasible because: it is the acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold, the item or service is only available from a single source; a public exigency or emergency for the requirement will not permit a delay from publicizing a competitive solicitation; or after a solicitation of a number of sources, competition is determined to be inadequate.
- B. The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals [**2 C.F.R. Section 200.324(a)**]. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used [**2 C.F.R. Section 200.324(d)**].
- C. The non-Federal entity must 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 cost or price [**2 C.F.R. Section 200.318(i)**].
- D. The following contract provisions or conditions shall be included in all procurement contracts and subcontracts:
- General Administrative Provisions
- Effective date of the contract.
  - Names and addresses of the firm and the non-Federal entity.
  - Citation of the authority of the non-Federal entity under which the contract is entered into and the source of the funds.
  - Conditions and terms under which the contract may be terminated by either party for cause and for convenience and remedies for violation/breach of contract.

- Procedures for amending or revising the contract.
- Names of representatives of the non-Federal entity and contractor who will act as a liaison for administration of the contract.
- A clause prohibiting a transfer of any interest in the contract by the contractor.
- Provisions requiring the contractor to maintain records and furnish reports.

#### Scope of Services

- Detailed description of the extent and character of the work to be performed.
- Time for performance and completion of contract services, including project milestones, if any.
- Specification of materials or other services to be provided (i.e. maps, reports, etc.)

#### Method of Compensation

- Provisions for compensation for services including fee and or payment schedules and specification of maximum amount payable under the contract.

#### Federal Standard Provisions

- Compliance with Executive Order 11246, as amended (Required for service contractors only if the contractor has 50 or more employees and the contract is for more than \$50,000)
- Title VI of the Civil Rights Act of 1964 clause
- Section 109 of the Housing and Community Development Act of 1974 clause
- Section 3 of the Housing and Urban Development Act of 1968
- Access to Records/Maintenance of Records clause
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973, as amended
- Conflict of Interest 2 CFR §200.318
- When required, all construction contracts exceeding \$2,000 shall include provisions for compliance with the Davis-Bacon Act (DBA), the Contract Work Hours and Safety Standards Act (CWHSSA), The Copeland Act (Anti-Kickback Act) clause, and the Fair Labor Standards Act (FLSA) clause.

This Code of Conduct shall govern the performance of the elected or appointed officials or member of any board or commission employees or agents of the \_\_\_\_\_ engaged in the award and administration of contracts supported by Federal funds under the Community Development Block Grant.

- I. The provisions and requirements of the *Conflicts of Interest, at subpart (d)* of the Nebraska Political Accountability and Disclosure Act [such subpart (d) encompassing Sections 49-1493 through 49-14,104 of the Nebraska Revised Statutes], are incorporated in this Code of Conduct by this reference. The provisions and requirements of 2 C.F.R. Section 200.112 are also incorporated in this Code of Conduct by this reference. The requirements of these Nebraska state statutes and federal regulations will be adhered to, and in the event of a conflict in the requirements of any of such state and federal requirements, the stricter of any conflicting provisions will be adhered to.
- II. No employee, officer, or agent of the municipality may participate in the selection, or in the award or administration of a contract supported by Federal funds if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent; any member of his or her immediate family; his or her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract [**2 C.F.R Section 200.318(c)(1)**].
- III. The officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts [**2 C.F.R Section 200.318(c)(1)**].
- IV. Violations of this Code of Conduct will invoke penalties and sanctions consistent with applicable Federal and State laws.