

The award of Federal funds does not exempt the Grantee organization from compliance with State, and local requirements. When similar requirements exist at all levels, the rule of thumb is that the most stringent requirement applies. Failure to comply may result in disallowed costs.

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### **Construction Management Services**

Construction management contract means a contract under which an owner contracts for a guaranteed maximum price (fixed price) for technical consultation during the design stage of a facility alteration and renovation or construction project, and for organization and direction of construction activities during the construction phase. These services may be separate or part of an architectural/engineering contract. The construction manager, operating in conjunction with the grantee and architect, is responsible for cost estimates and cost control, review of the design with a view toward value engineering, consultation on construction techniques, construction coordination and scheduling, and direction of all construction activities through completion of the project.

When separate from an architectural/engineering contract, the service of a construction manager under a construction management arrangement is generally considered management services. As long as it is not prohibited by State or local law, and with prior approval from HRSA, construction management services may be procured on a negotiated basis, rather than by formal advertising. In this situation, the construction manager would be considered a temporary hire. The services of a construction manager may also be procured by formal advertising utilizing prequalification and selective solicitation.

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### **Procurement of Goods and Services with Federal Grant Funds**

#### **Overview**

- 1) Grantee's procurement requirements must be in conformance with the appropriate applicable Federal, State, and local laws.
- 2) Procurement requirements are applied by the total cost of the contract for which Federal grant funds are being contributed.
- 3) If the contract is over \$100,000, the contractor must be able to secure performance and payment bonds (or equivalent). Waivers of the requirement or requests to use self-insurance are not acceptable.
- 4) Contracts over \$100,000 must conform to open and competitive procurement requirements.
- 5) Contracts under \$100,000 must comply with simplified acquisition requirements.
- 6) If grant funds are being utilized for A/E costs. Unless A/E selection was in accordance with open and competitive bidding practices, A/E firms utilized for preparation of the grant application must also go through competitive bidding.

- 7) Piggy backing onto existing contracts is unallowable (i.e. if the scope of the proposed project was not defined in the existing contract, it must be procured in accordance with Federal procurement requirements.
- 8) Grantees must ensure open and competitive procurement.
- 9) Selection criteria, review of proposals, and should be clearly documented.

### ***Procurement Regulations***

A Grantee may acquire a variety of commercially available goods or services in connection with a grant-supported project or program. Grantees can use their own procurement procedures that reflect applicable state and local laws and regulations, as long as those procedures conform to the following applicable U.S. Department of Health and Human Services (HHS) regulations:

- **Procurement Requirements for Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations:** 45 CFR § 74.40 through § 74.48. [http://www.access.gpo.gov/nara/cfr/waisidx\\_07/45cfr74\\_07.html](http://www.access.gpo.gov/nara/cfr/waisidx_07/45cfr74_07.html)
- **Procurement Requirements for State, Local and Tribal Governments:** 45 CFR Part 92. States must follow the requirements at Title 45 Code of Federal Regulations(CFR) § 92.36 (a). Generally, States must follow the same policies and procedures they use for procurements from non-Federal funds. Local and Tribal governments must follow the requirements at 45 CFR § 92.36 (b) through (i). [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/45cfr92\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfr92_03.html). Note: State and local government Grantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. State licensing requirements may be applied.

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### ***Contracts Pre-existing to the Grant Award***

When a Grantee enters into a contract in which the term is not concurrent with the budget period of the award, the Grantee may be permitted, with prior review and approval from HRSA, to charge allowable costs of the contract to the grant budget period in which the contract is executed:

- The awarding HRSA office has been made aware of this situation either at the time of application or through post-award notification; and,
- the contract was solicited and secured in accordance with Federal procurement standards; and,
- the Grantee has a legal commitment to continue the contract for its full term.

Contract costs will be allowable only to the extent that they are for services provided during the grant's period of performance. The Grantee will be responsible for contract costs that continue after the end of the grant budget period.

## **Piggyback Contracts**

Piggybacking on open contracts is generally unallowable. If the scope of the proposed project was not defined in the existing contract, it must be procured in accordance with Federal procurement requirements.

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## ***Avoiding Conflicts of Interest***

Grantees shall avoid real or apparent organizational conflicts of interests and non-competitive practices among contractors with procurement supported by Federal funds. Procurement shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements.

## **Factors that should be considered when selecting a contractor are:**

- Contractor integrity;
  - Compliance with public policy;
  - Record of past performance;
  - Financial and technical resources;
  - Responsive bid; and
  - Excluded Parties Listing (Debarred Contractors <https://www.epls.gov/>).
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## **Type of Procurement**

### ***Contracts will be normally competitively bid (Standard Procurement) unless:***

- The item is available only from a single source (preference is not a factor);
- After solicitation of a number of sources, competition is determined inadequate; or,
- The contract meets the requirements of simplified acquisition.

Note: HRSA is unable to grant waivers of competitive bidding based on grantee personal preference, or previous experience with a particular contractor.

### ***Simplified Acquisition***

The threshold for purchases utilizing the Simplified Acquisition Procedures cannot exceed \$100,000. Procurement actions may not be split to avoid competition thresholds. Simplified acquisition procedures were not developed to eliminate competition but to reduce administrative costs, improve opportunities for small, small disadvantaged, and women-owned small business concerns, promote efficiency and economy in contracting, and avoid unnecessary burdens.

Contracts secured under the simplified acquisition procedure must still document that the Grantee took actions to ensure that it is receiving the best price for the services/goods purchased (e.g., document three (3) separate price quotes for equipment and justify why one was chosen).

## **Standard Procurement**

Procurement by competitive bids and awards; involves basic steps of (1) publicizing the invitation, (2) invitation for bids, (3) submission of bids by prospective contractors, and (4) awarding the contract.

Formal advertising or sealed bidding means the method of contracting that involves preparing an invitation for bids describing the building design and specifications; publicizing the invitation for bids through distribution to prospective bidders, posting in public places, publication in newspapers, notices in trade journals, and such other means as may be appropriate; public opening of bids; and award of the contract to the responsible bidder whose bid, without negotiation, conforms to the invitation for bids and contains the lowest price.

A formal method of selecting the lowest responsive and responsible bidder. It includes the issuance of a written Invitation to Bid, public notice, a public bid opening and evaluation based on the requirements set forth in the invitation. Top

## **Types of procurement instruments**

The type of procurement instrument used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the Grantee but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting shall not be used.

## **Type of Construction Contracts**

Construction contracts may vary in the role of the contractor and/or nature of the work to be accomplished as follows:

- General Contract - A single contract may be awarded under which the contractor is required to perform all construction work for a predetermined price.
- Multiple Construction Contracts - The construction work on a project may be subdivided so that several individual prime construction contracts are awarded instead of a single general contract. Work under the multiple contracting method can be accomplished either by letting individual contracts after completion of total design documents or by overlapping the design and construction phases.
- Separate Design and Construction contracts....
- Design/Build - A contract may be awarded to a single contractor for both design and construction services. All architectural, engineering, and construction services provided for under the contract are supplied by a design/build team employed by, and managed by, the single firm which holds the design-construct contract. The contract terms are based upon the firm's response to the owner's request for proposals. The request contains performance criteria and quality controls for the project and is prepared by the owner.

- Guaranteed Maximum Price Contract – A contract under which a contractor agrees to complete the construction of a project at a cost not to exceed a pre-established maximum price. The ultimate cost of construction to the owner is the sum of all construction costs required to complete the project, or the guaranteed maximum price, whichever is less.
- Phased (fast-track) construction refers to the practice of developing portions of the construction work into packages ready for bidding before total completion of design documents. Design documents are considered complete when they are adequate for construction of a usable facility or designated portion thereof for a realistic bid price. Clarifying details may be developed as the work proceeds. Grantees must receive prior approval from HRSA when utilizing this method.

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## **Bidding Requirements for Standard Procurement**

Procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open, and free competition. The Grantee shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade.

Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the Grantee.

When contracting for architectural and engineering (A/E) services, geographic location (within reason) may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Positive efforts shall be made by Grantees to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. This will include:

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business

Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.

### **Analysis of proposals/bids**

The grantee shall undertake a cost or price analysis of all proposals. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts.

Any and all bids or offers may be rejected when it is in the Grantee's interest to do so. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation that meets the requirements of the RFQ/RFP and is most advantageous to the Grantee, price, quality and other factors considered.

The Grantee does not need to publish the results but does have to document the rationale for the selected contractor and ensure that the selection criterion was evenly applied to all bids.

Grantees must ensure that the analysis of all bids, including why a bid was/or was not selected is documented in the grantees procurement files in connection with the proposed grant. Documentation will be made available to the Federal Agency upon request.

### **Basic Contract Provisions**

All contracts, including small purchases, awarded by Grantees and their contractors shall contain the procurement provisions, as applicable:

- a. A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
- b. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
- c. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- d. The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
- e. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

- f. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

Contracts in excess of the small purchase threshold shall include, in addition to provisions to define a sound and complete agreement, the following provisions will be contained in all contracts and subcontracts:

- a. Contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- b. Suitable provisions for termination by the Grantee, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor. Alteration and renovation, and construction contracts shall include terms for liquidated damages.
- c. The minimum bonding and guarantee requirements shall be as follows:
  - (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
  - (2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - (3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
  - (4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."
- d. A provision to the effect that the Grantee, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

***Grantee Responsibility for Procured Services***

The Grantee is responsible for the settlement and satisfaction of all contractual and administrative issues related to contracts entered into in support of an award. This includes disputes, claims, protests of award, source evaluation, or other matters of a contractual nature.