

**NC DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER INFRASTRUCTURE (DIVISION)
COMMUNITY DEVELOPMENT BLOCK GRANT-INFRASTRUCTURE UNIT**

Policy Title: CDBG-I Program Procurement Policy

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This policy remains effective until it is amended, superseded, or rescinded.

PURPOSE AND SCOPE

Goods and services must be procured in an effective manner and in compliance with Federal, State, and local laws. These laws exist to ensure that funds are awarded through fair and open competition and are spent on eligible and reasonably priced goods and services.

Per 24 CFR Section 570.489(g), when procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition **where cost reasonableness has been determined in advance of contract bidding, per 2 CFR 200.324.**

Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used.

The policies and procedures shall also include standards of conduct governing employees engaged in the awarding **and/or** administration of contracts. Other conflicts of interest are covered by § 570.489(h). The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.330.

This policy is for the use of Community Development Block Grant-Infrastructure (CDBG-I) Program grantees (**Units of General Local Government**). This policy was developed to replace the Uniform Administrative Requirements of Subpart D of 2 Part 200, Sections 200.317-326, *Procurement Standards*, which does not apply to the CDBG State programs, per 2 Part 200.101(d). This policy takes the most restrictive of the two procurement regulations, either state or federal, and applies them to units of general local government's procurement for the CDBG-I program.

Maximum Full and Open Competition.

This policy provides for full and open competitions among prospective vendors and bidders. Competition should ensure that the pricing is fair, and the units of general local government are getting a reasonable price for the goods or services procured. In addition, full and open competition should reduce the potential for conflicts of interest and collusion on bids between

potential bidders and the units of general local government. Maximum full and open competition:

- Prevents fraud, waste, and abuse.
- Increases visibility and transparency.
- Receive reasonable prices from qualified contractors.
- Provides opportunities for all responsible contractors.

Maximizing competition to ensure that procurements are conducted, and contracts are awarded in a way that obtains the most competition that will serve the unit of general local government well.

This policy strives to avoid the following procurement issues:

- Unjustified sole-source contracts,
- Insufficient price or rate quotes from qualified sources,
- Lack of independent cost estimates or cost analyses,
- A failure to rotate vendors on lower priced purchases,
- The use of unreasonably narrow or specific qualification criteria or bid specifications,
- Short timeframes for responding to offers,
- An insufficient number of responsive bidders,
- Overuse of change orders,
- Collusive bidding or price fixing,
- Cost mischarging,
- Source selection fraud,
- Fictitious vendor fraud,
- Failure to check government debarment lists,
- Overuse of small purchase contracts,
- Lack of outreach to minority and women business enterprises, and
- An excessive number of small purchases contracts close to the small purchase dollar limit.

Conflict of Interest and Ethics.

Units of general local government (**grantees**), as part of their procurement processes, must adhere to the conflict-of-interest regulations, including but not limited to those found at N.C. General Statutes § 14-234(a)(1), 2 C.F.R. § 200. 318(c)(1), §320-321, §323-326, 24 C.F.R. § 570.489 (g) and (h), and 24 C.F.R. § 570.611 must be carried out. **It is the unit of general local government obligation to not only avoid conflicts of interest, but also to be alert and question real or apparent conflicts by any others, including procured consultants and contractors.**

Units of general local government must maintain procurement integrity through strong documentation and financial controls to avoid fraudulence, misuse, and abuse of federal funds.

- Separation of Duties.
 - One method for minimizing the potential for fraud and abuse in the procurement process is to have different individuals handling different parts of the process. For example, where one individual award the contract or orders the goods or services, a separate individual will review the goods or services for performance and/or delivery. An easy guide for compliance is that employees who handle the money, the mail or the goods purchased should be different from employees managing the

bookkeeping and financial accounts. This practice can be difficult in small cities, small departments, or organizations with few employees, but a method of oversight must be established to avoid fraud and unnecessary purchases. The rule of thumb should be that if an employee touches the money, mail, or goods purchased, he or she should not touch the books.

- Documentation.
 - Each step in the procurement process should be documented, from the initial decision to purchase through to final inspection of goods and services and final payment. The records should include, but are not limited to, files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract. The records should also include a justification for lack of competition when competitive bids or offers are not obtained, and the basis for the award cost or price. Documentation does not end at contract signing but should continue through the delivery of goods and services to record payments, inspection, change orders and cost/price analysis of the change order. Monitoring the performance of the vendor should be documented through inspections and review of performance and delivery.

REASONABLE COSTS

Per 2 CFR 200, a Cost or Price Analysis is required when procuring goods or services with federal funds more than the Simplified Acquisition Threshold, including contract modifications. An independent cost estimate serves as a yardstick for evaluating the reasonableness of the contractor's proposed costs or prices. An independent cost analysis consists of evaluating the separate elements (for example, labor, materials, etc.) that make up a contractor's total cost proposal to determine whether they are allowable, directly related to the requirement, and reasonable.

- Price Analysis – Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., total sum) without analyzing any of the separate cost elements.
- Cost Analysis - Cost analysis is the evaluation of the separate elements (e.g., labor, materials, profit, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirements and ultimately, reasonable. Cost Analysis should apply to both new contracts and contract modifications or change orders. The basic document in the grantee's efforts to evaluate cost and price is an "independent analysis" based on the procedures described below. The "independent analysis" can be done by grantee staff, by third party consultants, or by examination of existing price lists and product catalogs, but it is not based on bids received. The analysis is done prior to receipt of bids or review of proposals. This is the area where most findings have occurred historically because the analysis was not independent, or it was not documented prior to receipt of bids or proposals.

While the procurement method and degree of analysis depends on the facts surrounding the procurement, the following illustrates some of the cost and price analyses that may be performed in certain procurement situations.

- Micro Purchases – Micro purchases require simple price analysis prior to receiving bids or proposals. They do not require a cost analysis.
- Small Purchases – Grantees should review the proposed prices, from offerors to prices paid for the same or similar services. Catalog or market prices of products sold to the general public can suffice for cost estimates for equipment and supply purchases.
- Sealed Bid – Grantees should always prepare their own cost estimate and compare it to the low competitive bid received. If they are significantly different, the grantee will need to evaluate its initial estimate, compare it to the bids received, and identify the appropriate price.
- Competitive Proposals – To determine the reasonableness of proposed costs, the grantee will need to obtain cost breakdowns showing all the elements of the scope of work and perform a cost analysis using the appropriate set of principles.

Units of general local government should obtain a breakdown of proposed costs and perform a cost analysis of those costs. The following are special circumstances involving contracts and cost analysis requirements:

- Cost Reimbursement Contracts – A Cost Analysis using cost principles must be performed on a Cost Reimbursement Contract.
- Architecture and Engineering Contracts - Cost Analysis is required in determining if the cost portion of an A/E contract is fair and reasonable.
- Construction Contracts – Construction contracts awarded using Sealed Bids do not require Cost Analysis. However, an estimate of market costs should be made prior to awarding the contract. Construction Contracts awarded using any other method of procurement require Cost Analysis. Some grantees will contract out cost analysis to independent architect or engineering firms.

In addition, changes to the contract will require cost analysis in the following situations:

- Contract Modifications – If a grantee is negotiating a modification or change order to a contract that changes the scope and/or impacts the price or estimated cost, the grantee should perform further cost analysis. The only exception to this is if the modification is based on pricing already established in the contract. A contract where the scope is reduced, and the contract price remains the same will still require further cost analysis to determine that the change is fair and reasonable.
- Contract Terminations – If a grantee terminates a contract for convenience, the grantee must use cost analysis and the appropriate cost principles to negotiate the final amount of termination settlement. If the grantee is terminating a cost re-imbursement contract for cause, the grantee should use cost analysis and the appropriate cost principles to negotiate the final amount of termination settlement.
 - In addition, contracts must include termination language in the contract when they are over \$10,000, as described in Appendix II of 2 CFR Part 200.

Price Analysis.

Micro Purchase and Small Purchase procurement methods require price analysis when selecting vendors and suppliers. There are a variety of ways of analyzing price, some of which are illustrated below, but the method and degree of analysis grantees used is dependent on the facts surrounding the procurement situation. Price Analysis should be documented in the procurement file.

- Compare competitive prices received in response to the solicitation to each other.
- Compare proposed prices to prices on existing contracts or contracts proposed in the recent past. Be sure to factor in any changing conditions, including market, inflation, material price changes.
- Apply rough approximations and review significant inconsistencies, which may require a deeper look at prices to determine if the items are truly comparable. The types of approximations might include price per pound, per square foot, per hour or other typical unit pricing mechanisms.
- Review price lists, catalogs, or market prices of similar products to determine the market prices generally available to the public.

Cost Analysis.

Cost Analysis includes the review and evaluation of the separate cost elements, including labor, supplies, equipment, profit, overhead and general conditions. Grantees should prepare an independent cost analysis before receiving bids, proposals, and contract modifications. The method and degree of analysis is dependent on the facts surrounding the procurement situation. An independent estimate must be made before receiving bids or proposals if one of the following applies:

- When evaluating competitive proposals.
- When there is a sole source or non-competitive proposal.
- When only one bid is received after soliciting bids, the grantee does not have enough data to establish cost reasonableness and the grantee is considering awarding the contract to the single bidder.
- When negotiating modifications to contracts that impact on the price or estimated cost.
- When terminating a contract and the contractor is entitled to payment of reasonable costs incurred.
- When awarding a cost-reimbursement contract.

The major categories of costs include both direct costs (direct labor, equipment, supplies, travel and per diem, subcontractors, and other direct costs) and indirect costs (overhead, general and administrative expenses, and profit). In the process of analyzing costs, profit should be analyzed separately, based on complexity of the work, risk to the contractor, investment required, amount of subcontracting involved, and typical profit in the industry. The process for completing a Cost Analysis includes verifying cost data and evaluating the elements of the project as described below. Costs that can be charged against the award are the allowable direct costs and the allocable indirect costs, less any applicable credits.

- Allowable (Allowability) Costs. (2 CFR 200.403 and 24 CFR 570.207 and .610) A cost is allowable under criteria to be allowable under the CDBG program if the expenditure is:
 - Be necessary, reasonable, and directly related to the grant program.
 - Authorized by the State-administered CDBG program.
 - Not prohibited under federal, state, or local laws or regulations.

- Consistently treated.
 - Allocable to the CDBG program.
 - Be adequately documented.
 - Cost must be incurred during the approved budget period.
- Reasonable Costs. (2 CFR 200.404) For the cost to be allowable, it must also be reasonable. This term is generally defined as what a prudent business would pay in a competitive marketplace. In determining the reasonableness of a given cost, pay attention to the following:
 - Is the cost generally recognized as ordinary and necessary for the operation of your organization or the performance of the award?
 - Are the restrictions or requirements imposed by generally accepted sound business practices, arms-length bargaining, Federal and state laws and regulations, and terms and conditions of the award?
 - Are the prices or cost comparable to market prices for goods or services for the geographic area?
 - Are the individuals performing their duties with good judgment under the circumstances, considering their responsibilities to the organization, its members, employees, clients, the public-at-large, and the government?
 - Have there been significant changes from the established practices of the organization that have unreasonably increased costs?
- Allocable Costs. (2 CFR 200.405) The costs should be related to or required for the performance of the contract. Many costs may be allowable but not related to the work required under the contract, and therefore not allocable.
 - Is the cost incurred specifically for the CDBG grant?
 - Does the cost incurred benefit both the CDBG project and other projects, and can the cost be allocated pro-rata across the relevant funding sources?
 - Has an indirect cost plan been approved to allocate indirect costs?

The process for applying cost and price analysis should include the following due diligence review.

- Check the accuracy of the cost and pricing information submitted, and evaluate:
 - The necessity for proposed cost items. A cost may be allowable under the cost principles and even allocable to the type of work to be performed, but still not be necessary for the specific contract.
 - The application of audited or pre-negotiated indirect cost rates, labor and fringe benefit rates, or other factors.
 - The effect of the vendor's bid approach on potential future costs. Does the vendor have a track record of containing costs (completing contracts at or "under cost")? Do they frequently have cost overruns?
 - The projection of the vendor's cost trends. Is there any indication that the vendor's costs are likely to increase or decrease over the life of the contract?
- Compare costs proposed by the vendor with:
 - Actual costs previously incurred by the same contractor for the same or similar work. Apply any appropriate inflation factors for past work.
 - Actual costs of the same or similar work performed by other contractors.
 - Previous cost estimates from the vendor or others for the same or similar items.

- The methods proposed by the vendor with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed and the work required?).
- The grantee's independent cost estimate, either created by grantee staff or for the grantee by an independent architect, engineer, appraiser, etc.
- Verify that the vendor's cost submissions comply with the appropriate set of cost principles.

PROCUREMENT METHODS

Units of general local governments must select from one of the following procurement methods based on the type of goods and/or services being procured and their cost.

Micro-Purchases.

Units of general local government can use this method for contracts without soliciting pricing or bids if the price of the goods or services is fair and reasonable. To the extent practicable, must distribute micro-purchases among qualified suppliers.

Applies To:

- All purchases of goods and services, including construction.
- Up to the micro-purchase threshold of \$10,000.

Process:

1. Must distribute micro-purchases equitably among qualified suppliers to the extent practicable.
2. Must ensure solicitation from small, historically underutilized businesses, (HUB), minority- and women-owned enterprises (M/WBE), and Section 3 businesses.
3. Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements.
4. If using this method for services, check for eligibility at SAM.gov and at the NC Department of Administration Debarred Vendors listing prior to finalizing the service contract.
5. Can award contract without competition if price is fair and reasonable.
6. Must document decision process for the purchase.
 - Requires needs and rationale documentation.
 - Requires cost reasonableness documentation.
 - Requires documentation of best efforts to use M/WBE firms when possible.

[Cite 2 CFR 200. There is no comparable method in State law; therefore, all purchases and service contracts that meet the above threshold must comply with this federal method.]

Small Purchases.

Units of general local government will use this method as the informal bidding process for goods and services. Units of general local government cannot divide the contract for the purpose of evading competitive (formal) bidding requirements or to get costs under the threshold.

Applies To:

- All purchases of goods and services, including construction.
- \$10,001 up to the Simplified Acquisition Threshold (now \$250,000) or the equivalent local/state threshold if more restrictive (it is for purchase of goods). **Threshold includes contract modifications that increase total cost.**
 - Construction: Cost up to \$250,000
 - Goods: Cost up to \$89,999
- Fixed price, unit price, or not-to-exceed contract types.

Process:

1. Cost or price analysis (updated cost estimate provided by the project engineer) is not required prior to soliciting bids for goods but is required for construction.
2. Obtain price or rate quotes from at least three (3) sources.
3. Must take affirmative steps to ensure solicitation from small, historically underutilized businesses (HUB), minority- and women-owned enterprises (M/WBE), and Section 3 business concerns.
4. If using this method for services, check for eligibility at SAM.gov and at the NC Department of Administration Debarred Vendors listing prior to finalizing the service contract.
5. Standard of award.
 - Award contract to the lowest responsive, responsible bidder.
6. Documentation for Files.
 - **Requires everything required by micro-purchase.**
 - **Requires documented informal solicitation of bids/prices – solicitation information should be consistent for all vendors.**
 - **Requires cost reasonable documentation.**
 - **Requires applicable federal contracting language and provisions in the written contract.**

[Cite 2 CFR §§ 200); PDAT Supplement at II-6, V-8; NCGS 143-131; NCGS 143-131(b)) Purchases and service contracts less than \$30,000 are not subject to state competitive bidding requirements. Per NCGS 143-128.2, local governments must establish good faith efforts prior to bid solicitation.]

Sealed Bids.

Units of general local government will use this formal bidding process for construction. Units of general local government cannot divide the contract for the purpose of evading competitive bidding requirements.

Applies To:

- Purchase and service contracts costing more than the Simplified Acquisition Threshold (>\$250,000) or the equivalent local/state threshold if more restrictive.
- For the CDBG-I Program, the thresholds are:
 - Construction: \$250,001 and over.
 - Goods: \$90,000 and over.
- Preferred method for construction contracts above the simplified acquisition threshold.

Requires an independent cost estimate or price analysis (updated cost estimate provided by the project engineer) is required prior to soliciting bids for all types.

Bid Alternates:

The CDBG-I program allows specific bid alternates. Bid alternates should only be used as an option to get more work done if the base bid is low enough that acceptance of an alternate(s) stays within the budget, or to receive prices for different materials, or an alternative construction method for the project.

1. An Additive bid is a body of work that the grantee may award with the base bid if there is sufficient funding after the bids are received.
2. A Deductive bid is a body of work that the owner may delete from the base bid if there is insufficient funding to award the full base bid.
 - The purpose of both Additive and Deductive bids is to build flexibility into the bidding process so that the grantee can award the maximum amount of the project possible dependent on funding available.
3. An Alternate bid is a bid in which the grantee asks for prices for an alternate method of constructing something in the base bid or using alternate materials. The alternate price would be the differential between the price included in the base bid and the price for the alternate method or material. In developing the bid form, it's important to make sure that it's clear that the alternate bid amount should be the differential price.
 - Alternates that specify a different material to stay within the budget or get more value for the dollars spent (e.g., base bid has DIP specified and associated unit price. Alternate would propose using PVC in lieu of DIP. The difference in price of the material may or may not make a difference to the owner).

Alternates should stand alone and not dependent on another alternate being accepted or rejected at the time of award. If it becomes apparent there are sufficient funds to add scope to the project, the owner must re-procure / re-bid the additional scope of work. Adding a bid alternate (i.e., increasing the scope) that was previously rejected via change order violates this procurement policy.

Alternates may not be used to help “choose the bidder” the grantees want to work with. The base bid and alternates should be evaluated in the same manner for all bidders.

Alternates should be used sparingly. Too many alternates may confuse bidders or make the project look so complicated that contractors don't bid at all. They should be limited to a reasonable number.

Process:

The following process may begin once units of general local government receive bid and design package approval from the Division.

1. Coordinate Dates.

- Contact the CDBG-I Unit Grant Representative assigned to your project to coordinate pre-bid meeting dates prior to finalizing the bid notice.
- A pre-bid meeting must be held involving all interested contractors and invested parties (CDBG-I Program Staff, Project Engineer, Grant Administrator, and local government representatives).
- The meeting must be scheduled to give contractors sufficient time to factor in the additional work required to comply with Davis-Bacon and Section 3 regulations.

2. Bid Notice.

- A complete, adequate, and realistic set of plans/specifications or purchase description is available to bidders.
- All required federal and state language must be in the bid notice. A sample bid notice can be found on the Division of Water Infrastructure website.
- A digital copy of the final bid notice must be received by the NCDEQ at the time it goes out for solicitation.
- Public advertisement of at least thirty (30) days prior to bid opening.

3. Solicitation of Bids.

- Solicit bids from an adequate number of known suppliers.
- At least three (3) direct solicitations, in addition to the public advertisement, and publication on both the state **NC eVP system** and HUB websites (this is the responsibility of the local governments not NCDEQ).
- Take affirmative steps to directly solicit bids must include qualified HUB, M/WBES, small businesses, and Section 3 business concerns in the area.
- Section 3 business concerns must meet the requirements of 24 CFR Part 75.

4. Minimum Number of Bids Needed.

- Public bid opening at date and time advertised.

- For construction, a 5% bid bond is required for all bidders; performance and payment bonds of 100% of the contract price is required of the winning bidder.
- At least two (2) bidders for the purchase of goods and services, or if the contract is a construction repair contract.
- At least three (3) bidders *minimum* are required for bid opening on the first attempt for construction.
 - If three (3) bidders DO NOT bid on the project, the bids MAY NOT be opened.
 - The grantee must then publicly advertise in a newspaper with a larger distribution for at least seven days (NCGS 143-129).
 - If two (2) or more bids are received, then bids may be opened.
 - If one (1) bid is received, then a price analysis must be conducted, and a letter sent to DEQ Division of Water Infrastructure requesting permission to move forward with sole source procurement.

5. Standard of Contract Award:

- Award to the lowest, responsive, responsible bidder. The local governing board approval is required unless the governing board has delegated award authority to an individual official or employee.
 - Determination of lowest price must include factors such as discounts, transportation costs, and lifecycle costs.
 - Determination of responsive and responsible, see the NC School of Government’s “*Awarding Competitively Bid Contracts, Lowest Responsive Responsible Bidder Flowchart.*”
- Can reject any and all bids for “sound documented reasons” – must be stated in the bid notice.
- Check for eligibility to receive federal funds at SAM.gov and at the NC Department of Administration Debarred Vendors listing prior to finalizing the construction contract.
- Contract awarded on a firm-fixed-price basis in writing with all applicable contract provisions.

6. Process after Multiple Failed Attempts

If a local government has attempted, and failed, to secure a sealed bid after two attempts, the local government must:

- Reassess and repackage (i.e., construction timeframe, scope of work, etc.) the project to fit the CDBG-I funds awarded without compromising the LMI.

- Take into consideration the plan holders' comments within your control to simplify the bids.
- If applicable, limit bid alternates no more than three (3).
- Once this is completed, approved by the NCDEQ CDBG-I Unit, the project can go out for sealed bids under this method from the beginning.

7. Overbids and Bid Negotiations

If the bids received exceed the designated budget, the grantee has the following options:

- Reject all bids and re-bid the project; or
- Accept the deductive alternates in the bid packet (if applicable); or
- Delete bid items before contract award if all bidders agree in writing to changes; or
- Accept the low bid and provide additional local funds.

Per N.C.G.S. 143-129(b), units of general local government cannot negotiate with bidders on projects in the formal bidding range unless the bid submitted by the apparent lowest responsive, responsible bidder exceeds funds available for the project. In this case, the grantee may negotiate with that bidder and make "reasonable" changes in specifications and plans to bring the contract price to within funds available, and then it may award the contract to that bidder. If negotiations are unsuccessful, the project must be re-bid.

Any redesign of the procurement project triggers the grantee to reject all bidders and start the procurement process from the beginning to ensure integrity of the process.

8. Documentation:

- **Must have a well-documented transparent and formal procurement process, including all steps and decisions on procurement (e.g., **required cost reasonable and independent cost estimate**, pre-bid meeting minutes, advertisement(s) with an affidavit(s) of publication, copy of each solicitation, copy of the **NC eVP system** and HUB postings, certified bid tabs, **written construction agreement with all required applicable federal contracting language and provisions**, documentation of lowest price determination, bid negotiation if applicable).**

[Cite 2 CFR §200; NCGS 143-129; NCGS 143-128.2(e). Per NCGS 143-128.2, local governments must establish good faith efforts prior to bid solicitation.]

Competitive Proposals for Professional Services. (Request for Proposals / RFPs).

Units of general local government are required to use this method for specific professional services where price is one of the rating criteria.

Applies To:

- Procurement of grant administrators, lawyers, planners, accountants, etc. for the project, regardless of the size of the contract.
- A contract costs more than the simplified acquisition threshold (now \$250,000).
- Situations where conditions are not appropriate for the use of sealed bids.

The following process may begin once the units of general local government have received an award letter from the Division. Units of general local government may begin this process prior to applying to the Division for funding, if the request for proposals have specific language in it in case the funding application is not awarded.

Process:

1. Appoint a Local Selection Review Committee and/or Person.
 - Each local government needs to appoint a local selection review committee and /or person responsible for developing the RFP, receiving the submitted RFPs, reviewing, and evaluating the submissions, and recommending a firm/business to the local governing body.
 - Must have written method for conducting technical evaluations of proposals and contractor selection.
2. Development of Request for Proposals (RFP).
 - Must clearly and accurately state the technical requirements and scope of work for goods and/or services required.
 - Evaluation criteria and relative importance is identified in the RFP.
 - If local government is giving a preference to Section 3 businesses, this must be stated in the RFP.
 - The author of the RFP may not respond to the same RFP. They are ineligible for consideration due to conflict of interest.
 - RFP templates are available on the Division of Water Infrastructure website to assist with RFP development.
3. Solicitation for Proposals.
 - The Request for Proposals (RFP) must be publicly advertised in a newspaper of general circulation. There must be an adequate number of days (at least fifteen (15) business days starting on the date of publication) from the time of advertised notice and submission deadline to allow time for respondents to receive a detailed RFP (if applicable), prepare and submit their proposal.

- There is a short-form RFP local governments may use in a newspaper as a cost saving measure. However, a more detailed RFP must be done.
 - In addition, the detailed RFP must be published on the **NC eVP** system and HUB website (all this is the responsibility of the local governments not NCDEQ).
 - The detailed RFP must be directly solicited from at least three sources (responsibility of each local government not NCDEQ).
 - Direct solicitations must include qualified HUB, M/WBEs, small businesses, and Section 3 businesses in the area to comply with direct solicitation requirements.
 - Section 3 businesses must meet the requirements of 24 CFR Part 75.
4. Minimum Number of Proposals Needed.
- Must have a minimum of two (2) respondents to move forward with a contract.
 - If there is only one (1) respondent, the RFP must be republished in a newspaper of wider distribution for fifteen business days: in addition to, an expanded direct solicitation effort.
 - If only one firm responds again, request permission in writing from the DEQ CDBG-I Supervisor to use sole source procurement.
5. Review and Rate Received Proposals.
- Any responses to the publicized RFP must be considered to the maximum extent practical.
 - Evaluations of each proposal must be in writing and dated. Those evaluations must be maintained in the project files.
6. Standard of Award.
- Responsible firm with the most advantageous proposal, considering price and other factors identified in the RFP.
 - Check for eligibility to receive federal funds at SAM.gov and at the NC Department of Administration Debarred Vendors listing PRIOR to finalizing the services contract (e.g., grant administrative services, accounting, planning, legal services, etc.).
 - Either a fixed price (a specified price to be paid when the items or services are delivered and accepted) or a cost-reimbursement / “not-to-exceed” (price is usually reimbursed as costs are incurred) contract.
 - **The service contract should contain four parts:**
 - **Part I – Agreement with Effective Dates**
 - **Part II – Scope of Work and Milestones**
 - **Part III – Payment Schedule**
 - **Part IV – Terms and Conditions (includes federal provisions and clauses)**

7. Documentation.

- **Must have a well-documented transparent** procurement process including, but not limited to advertisement(s) of RFP, affidavit of publication(s) of RFP, **NC eVP** system and HUB postings, direct solicitation documentation, evaluation criteria, evaluations of every candidate, responses to proposal received, reason for final selection, council/commission meeting minutes of award.

[Cite 2 CFR §200, No similar procedure in state statute that generally applies to procurement]

Competitive (Proposals) Qualifications for Professional Architectural and Engineering (A/E) Services. (Request for Qualifications / RFQs).

Units of general local government are required to use this method for any qualification-based solicitation and selection, where price cannot be a factor in the evaluation.

Applies To:

- Procurement of architectural, engineering, construction management at-risk services and surveying services for the project, regardless of the size of the contract.
- This process may not be used for procurement of grant administrators.

The following process may begin once the units of general local government have received an award letter from the Division. Units of general local government may begin this process prior to applying to the Division for funding, if the request for proposals have specific language in it in case the funding application is not awarded.

Requires cost reasonableness and independent cost estimate.

Process:

1. Appoint a Local Selection Review Committee and/or Person.
 - Each local government needs to appoint a local selection review committee and /or person responsible for developing the RFQ, receiving the submitted RFQs, reviewing and evaluating the submissions, and recommending a firm/business to the local governing body.
 - Must have written method for conducting technical evaluations of qualifications and contractor selection.
2. Development of Request for Proposals (RFQ).
 - Must clearly and accurately state the technical requirements and scope of work for goods and/or services required.
 - Evaluation criteria and relative importance must be identified in the RFQ; however, price is not a factor in the initial selection of the most qualified firm.

- If local government is giving a preference to Section 3 businesses, this must be stated in the RFQ.
- May use local geographic preferences for the procurement of these specific services, provided that this leaves an appropriate number of qualified firms (three) given the nature and size of the project, to compete for the contract.
- The author of the RFP may not respond to the same RFQ. They are ineligible for consideration due to conflict of interest.
- RFQ templates are available on the Division of Water Infrastructure website to assist with RFQ development.

3. Solicitation for Proposals/Qualifications.

- The Request for Qualifications (RFQ) must be publicly advertised in a newspaper of general circulation. There must be an adequate number of days (at least fifteen (15) business days starting on the date of publication) from the time of advertised notice and submission deadline to allow time for respondents to receive a detailed RFP (if applicable), prepare and submit their proposal.
 - There is a short-form RFQ units of local governments may use in a newspaper as a cost saving measure. However, a more detailed RFP must be done.
- The detailed RFQ must be published on the **NC eVP system** and HUB website (all this is the responsibility of the local governments not NCDEQ).
- The detailed RFQ must be directly solicited from at least three sources (responsibility of each local government not NCDEQ).
 - Direct solicitations must include qualified HUB, M/WBEs, small businesses, and Section 3 businesses in the area to comply with direct solicitation requirements.
 - Section 3 businesses must meet the requirements of 24 CFR Part 75.

4. Minimum Number of Proposals Needed.

- Must have a minimum of two (2) respondents to move forward with a contract.
 - If there is only one (1) respondent, the RFQ must be republished in a newspaper of wider distribution for at least 15 business days; in addition to an expanded direct solicitation effort.
 - If only one (1) firm responds the second time, request permission in writing from the DEQ CDBG-I Supervisor to use sole source procurement.

5. Review and Rate Received Proposals.

- Any responses to the publicized RFQ must be considered to the maximum extent practical.
- Qualifications of respondents are evaluated to select the most qualified firm.
- Evaluations of each proposal must be in writing and dated. Those evaluations must be maintained in the project files.

6. Standard of Award.

- The most qualified firm, where price is not an evaluation factor in the RFQ.
- Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated.
- Check for eligibility to receive federal funds at www.SAM.gov and at the NC Department of Administration Debarred Vendors listing PRIOR to finalizing the engineering services contract (e.g., engineering services).
- State licensure requirements apply.
- Either a fixed price (a specified price to be paid when the items or services are delivered and accepted) or a cost-reimbursement / “not-to-exceed” (price is usually reimbursed as costs are incurred) contract. **The service contract should contain four parts:**
 - Part I – Agreement with Effective Dates
 - Part II – Scope of Work and Milestones
 - Part III – Payment Schedule
 - Part IV – Terms and Conditions (includes federal provisions and clauses)

9. Documentation.

- **Must have a well-documented transparent** procurement process including, but not limited to **cost reasonableness and independent cost estimate**, advertisement of RFQ, affidavit of publication of RFQ, **NC eVP system** and HUB postings, direct solicitation documentation, evaluation criteria, evaluations of every candidate, responses to the request for qualifications received, reason for final selection, council/commission meeting minutes of award, **written contract with all required applicable federal contracting language and provisions.**

[Cite 2 CFR §§200; 200.320(d)(5); NCGS 143-64.31]

Non-Competitive Procurement Method.

Units of general local government may request the use of this method. **Must be thoroughly documented with written approval from the NCDEQ CDBG-I Unit.**

Applies To:

- Noncompetitive procurement can only be awarded if one or more of the following circumstances apply.

Applies When:

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold; or
- The item is available from only one source: or
- The public exigency or emergency **for the requirement** will not permit a delay that would result from **publicizing** a competitive **solicitation**; or
- **After solicitation of a number of sources, competition is determined inadequate**; or
- Award agency expressly authorizes noncompetitive procurement in response to a written request. *The CDBG-I Program will approve the use of the non-competitive proposal procedure on a case-by-case basis only.*

Process:

1. Perform **independent cost estimate** or price analysis if procurement is above the simplified acquisition threshold (now \$250,000) or the equivalent local/state threshold if more restrictive.
2. If after the initial solicitation of proposals/qualifications only one response was received, the unit of local government is required to broaden their initial publication and direct solicitation by republishing in a larger circulation newspaper and expanding direct solicitation efforts. If after the second attempt only one response is received:
 - Submit procurement documentation to **the NCDEQ CDBG-I Unit** to use sole-source procurement.
 - Negotiate profit as a separate element of the contract price.
3. Check for the firm's eligibility to receive federal funds at SAM.gov and at the NC Department of Administration Debarred Vendors listing prior to finalizing the contract.
4. Documentation.
 - All required documentation as listed above, plus a copy of the letter to the DEQ CDBG-I Supervisor requesting permission to use sole source procurement and the response from the DEQ. Also, a copy of the price analysis performed.

[Cite 2 CFR §200); NCGS 143-129(e)(2)]

CONTRACT MODIFICATIONS

To maintain maximum full and open competition with procurement, this policy addresses what type of contract modifications are allowed and not allowed.

Change Orders.

Units of general local government can address an unforeseen problem during the progress of a construction project that was originally bid formally (sealed bids) or informally (small purchases) through change orders instead of using a procurement method. In other words, if a grantee bids out a construction or repair project, and then, during the project, discovers an unanticipated problem that will require additional work (and increased cost), the local government does not have to bid out that additional work.

Though, to maintain the integrity of the bidding process, the change order exception must only be used when (1) the change order work fits within the scope of the original project and (2) the reason for the change is something that was unanticipated or unforeseen at the time the original contract was awarded.

Thus, allowable change orders include:

1. Change orders to account for cost for unforeseen conditions, such as rock or undercut.
2. Change orders may be used for a minor redesign of a project if the redesign is required because of an unforeseeable problem with the original design.
3. Change order to adjust bid quantities to match those installed. Also known as a final adjusting change order.
4. Change order to account for a change of material, such as changing from DIP to PVC.
5. Change order to add minor scopes of work to the project if they are under the threshold for micro purchases.

The following will not be allowed:

- Change orders to add scope of work to a project more than a micro purchase.
- Change orders that exceed 15% of the total construction cost. Change orders should account for no more than 15% of the total project cost unless they represent items 1 and 3 under the above allowable change orders.
- Change orders that appear to circumvent procurement rules for fair and open bidding, etc. (e.g., trying to change order in a bid alternate that was not accepted by the grantee at the time they awarded the contract).
- Change orders whose purpose is to spend excess funds from the grant (i.e., doing additional paving just because “we have extra money”).

- Change orders that are under the scope of the general contractor but require materials or a subcontractor not procured during the bidding process.
- Change orders cannot be used to take advantage of a good deal on a construction project.
- Change orders cannot be used for fundamental redesign of a project and cannot be used to “fix” problems in the project specifications if the unit of local general government was aware of the problems before awarding the contract.

Other Contract Amendments.

As necessary, units of general local government may conduct contract amendments on professional service contracts due to unanticipated circumstances. Any contract amendments that include an increase in costs will not be paid for with CDBG-I grant funds. Grantees must be ready to pay local funds for said contract amendments.

POLICY HISTORY:

Version / Date:	Name / Changes
V.0 / 9/12/2017	Procurement Policy
V.1 / 4/30/2019	Procurement Policy for the CDBG-I Program
V.2 / 7/10/2019	Procurement Policy for the CDBG-I Program / Change in Simplified Thresholds
V.3 / 2/1/2021	Procurement Policy for the CDBG-I Program / Expanded on processes and steps
V.4 / 6/9/ 2021	Procurement Policy for the CDBG-I Program / Clarification on solicitation of HUB, M/WBE and Section 3
V.5 / 4/28/2023	CDBG-I Program Procurement Policy / Reformate, clarification
V.6 / 12/20/2023	Updated for new NC digital system for procurement, what needs to happen after multiple failed seal bidding attempts, clarification on cost reasonable requirements, clarification on change orders and contract amendments, and bid negotiations.