

## PROCUREMENT

**Procurement Standards:** Each owner/developer must become familiar 24 CFR 85.36, 24 CFR Parts 570 & 92 and CPD 96-05. Procurement standards under the HOME program include but are not limited to:

1. owner/developers may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal laws and standards;
2. owner/developers must 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 owner/developer shall participate in selection, or in the award or administration of a contract supported by HOME funds if a conflict of interest, real or apparent, would be involved;
3. owner/developers are encouraged to use value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value-engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost;
4. owner/developers will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement;
5. owner/developers must maintain records sufficient to detail the significant history of all procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price;
6. owner/developers will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to DECD;
7. all procurement transactions will be conducted in a manner providing full and open competition consistent with the federal procurement standards. Some of the situations considered to be restrictive of competition include but are not limited to:
  - placing unreasonable requirements on firms in order for them to qualify to do business,
  - requiring unnecessary experience and excessive bonding,

- noncompetitive pricing practices between firms or between affiliated companies,
  - noncompetitive awards to consultants that are on retainer contracts,
  - organizational conflicts of interest,
  - specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
  - any arbitrary action in the procurement process;
8. owner/developers must have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
- incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured; and
  - identify all requirements which the “bidders” must fulfill and all other factors to be used in evaluating bids or proposals.

**Methods of Procurement:** Owner/developers are responsible for the satisfaction of all contractual issues arising out of procurements entered into in connection with the HOME program. This includes assuring that all contracts funded in whole or in part with HOME funds are awarded in accordance with federal law, contain all of the necessary provisions for compliance with applicable regulations, and are executed in conformance with the regulations. Below are four types of procurement methods you may want to use:

1. **Procurement by sealed bids (formal advertising)**. 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. **The sealed bid method is the preferred method for procuring construction.**

**Sealed bids** method is appropriate when the following conditions exist:

- a complete, adequate and realistic specification or purchase description is available;
- two or more responsible suppliers and/or contractors are willing and able to compete effectively;
- the procurement lends itself to a firm fixed-price contract; and
- selection of the successful bidder can be made principally on the basis of price.

The following requirements apply for formal competitive (**sealed bid**) procurement:

- bids must be publicly advertised and bidders must be given sufficient time to respond prior to the date set for opening of bids (30 days);
- the invitation to bid, including specifications and pertinent attachments, must clearly define the items or services needed;

- all bids must be opened publicly at the time and place stated in the invitation to bid;
- a firm, fixed-price contract award must be made by written notice to the responsible bidder whose bid, conforming to the invitation to bid, is selected; and
- any or all bids may be rejected when there are sound documented business reasons that to do so would be in the best interest of the program.

2. **Procurement by competitive proposal.** The technique of competitive proposals is normally conducted with more than one source submitting an offer and involves issuing Requests for Proposals (RFP) or Qualifications (RFQ).

**Competitive proposals method** is generally used when conditions are not appropriate for the use of sealed bids. It may be used if the selection could be based on factors other than price, e.g., experience and capacity. Procurement of architectural and engineering (A&E) services falls under this category. Only fixed price or cost reimbursement “not to exceed” contracts may be awarded.

When using competitive proposal/negotiation, the following requirements apply:

- proposals must be solicited from three or more qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement;
- a RFP must be issued and publicized which identifies all significant evaluation factors and their relative importance;
- all proposals received must be evaluated and the owner/developer must have a formal process for technical evaluation of proposals received, for determination of responsible “bidder”, and for selection;

**Note:** Negotiations should be conducted with more than one “bidder”;

- awards may be made to the “bidder” whose proposal would be most advantageous to the owner/developer, considering the factors identified in the RFP or RFQ, with price and other factors considered; and
- owner/developers 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.

***The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services.***

3. **Procurement by small purchase procedures.** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$100,000. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

4. **Procurement by noncompetitive proposals** is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

**Noncompetitive proposals method *may be used only when*** the award of a contract is not feasible under sealed bids, competitive proposals or small purchase procedures and one of the following circumstances applies:

- after solicitation from a number of sources, competition is determined inadequate; or
- the items or services required are available only from one source; or
- DECD authorizes noncompetitive proposals because of a public exigency or emergency is such that the urgency will not permit a delay beyond the time needed to employ one of the other methods described above.

**Note:** The fact that a contractor is performing other consultant services for the owner/developer is not, in itself, an adequate justification for a non-competitive negotiated award.

**Minority and Women Business Enterprise Requirements:** Section 281 of the National Affordable Housing Act requires that minority and women owned business enterprises have opportunities in all contracting activities in HUD assisted housing. Owner/developers, when soliciting/advertising for bids, must include a statement that says, “**minority and women owned businesses are encouraged to apply**”. DECD maintains a list of all minority and women owned businesses. Each owner/developer is required to request a copy of the list for their project area and provide opportunities for MBE/WBE businesses. This list can be obtained by calling Marcia Bonitto at (860) 270-8025.

**Contract cost and price:** Owner/developers must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders. **The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.**

**Awarding Agency Review - Contracts:** All contracts must be reviewed and approved by DECD. If contracts have been awarded prior to applying to DECD, owner/developers will certify that the procurement was in compliance with these procurement standards. Federal Contract Provisions must be attached and incorporated into all construction and professional contracts. The attachments can be found in Exhibit \_\_\_\_\_. It is suggested that owner/developers use the Standard AIA forms for contracting with general contractors. These forms can be purchased through your local business office supply store. These forms can not be photocopied.

**Bonding Requirements:** For construction or facility improvement contracts or subcontracts exceeding \$100,000 DECD may accept the bonding policy of the grantee if it protects DECD interest; if not, the minimum requirements are:

1. Bid security in the amount of 5% of the bid price,
2. Performance Bond in the amount of 100% of the contract price, and
3. Payment Bond in the amount of 100% of the contract price,

-or-

Bid and contract securities in compliance with DECD requirements.

**Contract Provisions:** The following provisions must be included in the terms and conditions of the construction contract:

1. Remedies for violation or breach of contract terms,
2. Termination for cause and for convenience,
3. Compliance with Executive Order 11246 “Equal Employment Opportunity” as amended by Executive Order 11375 and as supplemented by Department of Labor regulations,
4. Compliance with the Copeland “Anti-Kickback” Act as supplemented by the Department of Labor regulations,
5. Compliance with the **Davis-Bacon Act** as supplemented by the Department of Labor regulations.
6. Compliance with the Contract Work Hours and Safety Standards Act as supplemented by the Department of Labor regulations,
7. Reporting requirements and regulations,
8. Patent rights requirements and regulations,
9. Copyrights and rights in data requirements and regulations,
10. Access to records of the contractor that are pertinent to the contract,
11. Retention of records for a minimum of period of 5 years,
12. Compliance with requirements under section 306 of the Clean Air Act, section 508 of the Clean Water Act, Executive order 11738 and Environmental Protection Agency regulations, and
13. Compliance with the standards and policies under the Energy and Conservation Act.

**Davis-Bacon Act:** Projects with 12 or more HOME assisted units must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the development of the housing (if CDBG/Small Cities funds are used in the project, then Davis-Bacon is triggered at 8 units). **Volunteers -** Davis-Bacon wage provisions do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

**Section 3:** Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, requires that economic opportunities generated by HUD financial assistance (HOME) for housing and community development programs be targeted toward low- and very low-income persons. In effect this means whenever HUD assistance generates opportunities for employment or contracting, to the greatest extent feasible, owner/developers must provide opportunities to low- and very low-income persons and to businesses owned by or employing low- and very low-income persons. Section 3 only applies to:

- owner/developers who receive \$200,000 or more; and projects for which HOME's share of the project costs exceeds \$100,000; and
- contracts and subcontracts awarded on the project for which HOME's share of project costs exceeds \$100,000.

Owner/developers and their contractors must show preferences for giving training and employment opportunities to low-income persons, to the greatest extent feasible.

Owner/developers and their contractors should show priority considerations for hiring low-income persons as follows:

- low-income persons residing in the project area or neighborhood; and
- participants in HUD Youthbuild programs.

Owner/developers and their contractors/subcontractors must give preference to Section 3 businesses. A Section 3 business is either 51% or more owned by low-income persons, employs substantial numbers of low-income persons, or is substantially owned by low-income persons (but less than 51%) and that employs low-income persons in key management positions. They should show the following preference order for awarding contracts:

- Section 3 businesses that operate in the project area; and
- Entities that carry out Youthbuild programs.

**Note:** The persons or businesses hired should be qualified to perform the work required.

Owner/developers and their contractors should make **good faith efforts** to hire low-income people and/or award contracts and subcontracts by doing the following:

- advertising contracting opportunities in prominent areas of the housing development;
- providing written notices to all known Section 3 businesses;
- coordination of pre-bid meetings and workshops;
- breaking out contract work items into economically feasible units for Section 3 businesses; and
- contacting agencies administering Youthbuild programs.

Owner/developers must document their best efforts to comply with Section 3 and their success at hiring low-income persons or businesses. The DECD is responsible to provide annual reports to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO). The DECD will be working with grant owner/developers for reporting their Section 3 efforts.

## **PROCUREMENT GUIDE**

The following guide is provided as an illustrative example of a procurement process that meets the standards discussed above for “**Procurement by competitive proposals**” for general contractors.

### **GUIDE**

**Project Name:**

**Project Location:**

**Project #:**

**Date:**

#### **Sample Procurement Procedure for Competitive Negotiations**

The Owner/Developer shall adhere to the following procurement procedure for the Project. This procurement procedure will allow for a competitive selection process to be used to evaluate and select the general contractor and abatement contractor (contractors). Selection of subcontractors of the general contractor and the abatement contractor shall be administered by their own procedures.

1. Owner shall solicit Request For Qualifications (RFQ) from contractors. Solicitation of contractors (Exhibit 1) will include contact directly from owner and various design consultants working on the project and contact through minority resource centers (Exhibit 2).
2. Contractors will be available to pick-up a RFQ package (Exhibit 3) which shall include a description of the project, RFQ submission requirements, contract requirements, selection criteria and information on Section 3.
3. Selection criteria shall evaluate all criteria included in the RFQ Package and the contractors which rate the highest will be selected. A ranking sheet shall be used by the selection committee (Exhibit 4).
4. Owner will submit a Section 3 Plan to the Department of Economic and Community Development (DECD) prior to negotiations with contractors.
5. Owner will establish a selection committee to screen and evaluate RFQ responses, select and interview qualified candidates as the committee deems necessary, evaluate proposals, and make the final selection. The selection committee may include, but not limited to, members of the Board of Directors and Staff of Owner/Developer and design professionals working on the project.

6. RFQ selection shall qualify a minimum of three and maximum of six candidates as general contractor and a minimum of three and maximum of six candidates as abatement contractors or an appropriate number of contractors as determined by the committee.
7. Each selected contractor shall provide cost estimates and valued engineering at various design phases as the project schedule permits and upon completion of construction documents each selected contractor shall submit a sealed proposal.
8. Owner shall submit an independent cost estimate to DECD at the completion of the construction documents.
9. The final selection shall be made based principally on price and a fixed price contract shall be awarded to the most responsive and responsible contractor.
10. The contractor's selection package submitted to DECD shall include a statement that the contractor shall adhere to owner/developer Section 3 Plan, an Affirmative Action Policy and a statement that the contractor shall comply with Affirmative Action compliance as required by DECD and Bid Security.
11. Owner shall submit a Board of Director's Resolution indicating their approval of the selected contractors.
12. Upon DECD approval of the selected contractors Owner shall submit a Board of Director's Resolution approving the general contractor and abatement contractor final proposal which will be awarded the fixed price contract.
13. Owner reserves the right to reject the selected contractors final proposal if the amount is not within budget and solicit new proposals from new contractors and the existing qualified contractors.
14. Owner reserves the right to have legal counsel review the selected contractors RFQ packages and proposals.



**Exhibit 1**

**Project Name:**

**Project Location:**

**Project #:**

**Request for Qualifications Notice**

Owner/Developer, is soliciting Request for Qualifications (RFQ) from general contractors and abatement contractors (contractors) for our \_\_\_\_\_ Project located in, \_\_\_\_\_, Connecticut.

The Project consists of the rehabilitation/new construction of buildings located at \_\_\_\_\_, \_\_\_\_\_, Connecticut containing units of housing for low and moderate income families.

The project will be financed through the Department of Economic and Community Development (DECD) HOME Program and \_\_\_\_\_.

Contractors who wish to be considered and have the expertise, experience and capacity to provide the required services shall obtain a copy of the RFQ submission instructions from \_\_\_\_\_, Connecticut.

RFQ submissions shall be hand-delivered to \_\_\_\_\_, Connecticut in triplicate on or before \_\_\_\_\_.

Owner reserves the right to accept any submittal or to reject any submittal and to waive any informalities or irregularities in the submittal.

\_\_\_\_\_ is an Affirmative Action/Equal Opportunity Employer and small, minority and woman owned businesses are encouraged to apply.

### Exhibit 3

**Project Name:**

**Project Location:**

**Project #:**

#### Request for Qualifications Instructions

**Project Description:** The Project consists of the new construction/rehabilitation of \_\_\_ buildings located at \_\_\_\_\_ Street, \_\_\_\_\_, Connecticut containing \_\_\_ units of \_\_\_ housing for low and moderate income families. The project is scheduled to start construction in \_\_\_\_\_, 200\_\_ with completion in approximately \_\_\_ months; with possible phased relocation and/or occupancy.

**Project Financing:** The project will be financed through the Department of Economic and Community Development (DECO) HOME Program and \_\_\_\_\_. The \_\_\_\_\_ will act as limited partner and project syndicating agent.

**Request for Qualification Submission:** RFQ submissions shall be hand-delivered to \_\_\_\_\_, Connecticut in triplicate on or before \_\_\_\_\_.

**Submission Information and Selection Criteria:** Interested contractors shall submit information as outlined below and selection of approved contractor shall be based on the submission and review of the information. A selection committee will be established to review the information submitted, verify the information submitted, contact references and interview contractors as the committee may require. The selection committee may include, but not limited to, members of the Board of Directors and Staff of owner/developer and design professionals working on the project.

**Notice:** Owner/Developer reserves the right to reject the selected contractor's final proposal if the amount is not within budget and solicit new proposals from new contractors and the existing qualified contractors.

**Selected Contractors:** Selected contractors shall provide cost estimates and valued engineering at various design phases as the project schedule permits and upon completion of the construction documents each selected contractor (a minimum of three and maximum of six general contractors or an appropriate number of contractors as determined by the committee shall be selected) shall submit a sealed proposal. The sealed proposal shall be accompanied with a statement that the contractor shall adhere to Owner/Developer's Section 3 Plan, an Affirmative Action Policy and a statement that the contractor will comply and adhere to Affirmative Action compliance as required by DECD and Bid Security. The final selection of a general contractor and environmental contractor shall be based principally on price and a fixed price contract shall be awarded to the most responsive and responsible contractor.

**Project Name:**

**Project Location:**

**Project #:**

### **Request for Qualifications Instructions**

1. Name of company and Federal identification number
2. Permanent main office address
3. Principal business of firm
4. When organized
5. If a corporation, where incorporated
6. How many years you have been engaged in construction under your present firm or trade name?
7. Copy of appropriate licenses
8. Contracts on hand with anticipated dates of completion and projects completed in the past 5 years, showing gross amount of each contract
9. List of references relating to the contracts on hand and projects completed
10. Documentation of prior experience in projects similar to the \_\_\_\_\_ Project; including size, rehabilitation, federal funding, tax credit funding and historic district
11. Documentation of past performance on similar projects, i.e. have you defaulted on a contract, failed to complete work and percentage of change orders
12. Background, experience and qualifications of principal members, including officers and personnel
13. Current financial statement
14. Bank reference
15. Letter of interest from a bonding company to supply a bid bond and performance and material bond for the Project
16. Evidence of existing insurance coverage and statement that the contractor will comply with the insurance requirements for the project as outlined in the project manual
17. Affirmative Action Policy and Equal Employment Opportunities Policy and statement that the contractor will comply and adhere to Affirmative Action compliance as required by DECD
18. Statement that the contractor will comply and adhere to Owner/Developer's Section 3 Plan for the project
19. List of major equipment
20. Statement of interest in the project, statement as to why you feel qualified for the project and a statement that you can work within the project schedule.

**Exhibit 4**

**Project Name:**

**Project Location:**

**Project #:**

**Selection Criteria Ranking Weight**

Contractor Name: \_\_\_\_\_ Contractor Type: \_\_\_\_\_

Selection Committee Member Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Ranking Scores: 0=low, 5=high**

Complete RFQ Response: (0-5 points) \_\_\_\_\_

Local Based Firm: (5 points) \_\_\_\_\_

Appropriate Licenses/Current: (5 points) \_\_\_\_\_

Contracts on Hand/Conflict of Schedule: (0-5 points) \_\_\_\_\_

References: (0-10 points) \_\_\_\_\_

Prior Experience:     Housing Rehab/New Construction \_\_\_\_\_

                              Similar Contract Amounts: (0-5 points) \_\_\_\_\_

                              Federal Funding: (5 points) \_\_\_\_\_

                              Tax Credit Funding: (5 points) \_\_\_\_\_

                              State of Connecticut Funded: (5 points) \_\_\_\_\_

                              Historic District: (5 points) \_\_\_\_\_

Past Performance:     Defaulted: (-5 points) \_\_\_\_\_

                              Failed to Complete Work: (0-5 points) \_\_\_\_\_

Background/experience/qualifications of principal members,

    officers & personnel: (0-5 points) \_\_\_\_\_

Current Financial Condition: (0-5 points) \_\_\_\_\_

Interest and Rating of Bonding Company: (-9 or 5 points) \_\_\_\_\_

Insurance Coverage/Statement of Compliance: (0-5 points) \_\_\_\_\_

Affirmative Action/Statement of Compliance: (0-5 points) \_\_\_\_\_

Section 3/Statement of Compliance: (0-5 points) \_\_\_\_\_

**Total Points = \_\_\_\_\_**

Highest ranking contractors shall be qualified at a minimum of three and maximum of six candidates as general contractor and a minimum of three and maximum of six candidates as abatement contractor or an appropriate number of contractors as determined by the committee.