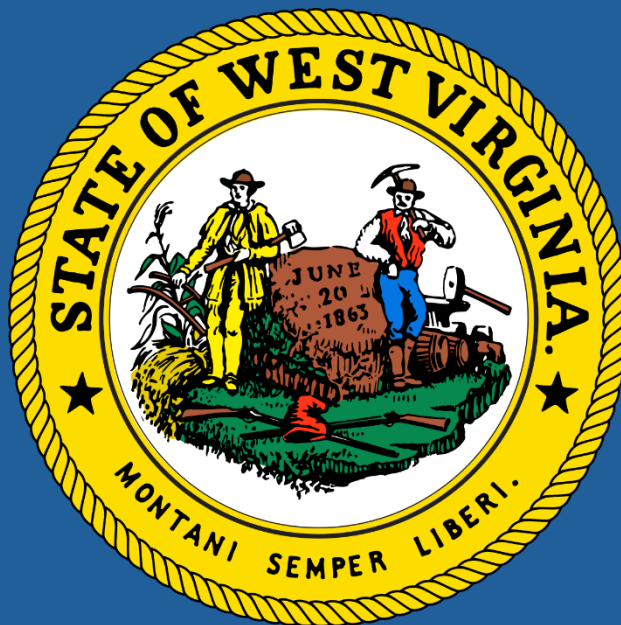


SUBRECIPIENT PROCUREMENT POLICIES AND PROCEDURES

CDBG, CDBG-CV, CDBG-MIT, and RHP



Effective 11/1/2021

WVDED | WVCAD

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INTRODUCTION

This document serves as a guide for West Virginia Community Advancement and Development (WVCAD), a division of the West Virginia Division of Economic Development (WVDED), Subrecipients awarded funding through one of the programs: Community Development Block Grant (CDBG), Community Development Block Grant – Coronavirus (CDBG-CV), Community Development Block Grant – Mitigation (CDBG-MIT), and Recovery Housing Program (RHP). In this manual, all necessary guidance concerning the procurement requirements of professional services and the purchase of products will be provided. Professional services may include architects, engineers, accountants, appraisers, attorneys, land surveyors, right-of-way specialists, etc. Please note, federal, state, and local procurement policies apply to all levels of procurement.

PROCUREMENT PROCEDURES

Each procurement transaction, except for the procurement of Architecture and Engineering services, must comply with the federal requirements outlined in **2 CFR 200.318 through 200.326**. The procurement of Architecture and Engineering services must adhere to **State Code 5G** and include a thorough analysis of cost and price. Additionally, all procurement transactions must be conducted in a manner that provides full and open competition and should avoid any provisions that restrict or eliminate competition.

To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive to competition include, but are not limited to:

1. Placing unreasonable requirements on firms for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or affiliated companies.
4. Noncompetitive awards to consultants that are on retainer contracts.
5. Organizational conflicts of interest.
6. 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
7. Any arbitrary action in the procurement process.

The non-Federal entity must conduct procurement in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for Architectural and Engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description must not, in competitive procurements, contain features which unduly restrict competition. The description may

include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

Please note, the subrecipient MUST have and follow local WRITTEN procurement policies and procedures that are compliant with 2 CFR 200. A simple resolution to adopt 2 CFR 200 or to follow WVCAD/WVDED’s procurement policies is not sufficient. Additionally, the subrecipient is required to read and comply with all requirements outlined in 2 CFR 200.318 – 200.326 and must include the applicable contract provisions identified in 2 CFR 200.327. The full federal register is available at the following location online:

<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>

2 CFR 200.318 – 200.326 Summary Chart		
Federal Citation	Short Title	Description
2 CFR 200.318	General Procurement Standards	The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward.
2 CFR 200.319	Competition	All procurement actions must be undertaken in a manner that ensures full and open competition .
2 CFR 200.320	Methods of Procurement to be followed	Methods of source selection; Methods of Procurement to be followed including, but not limited to, Micro Purchases, Small Purchases, Competitive Sealed Bidding, Competitive Proposals, and Non-Competitive Proposals.
2 CFR 200.321	Contracting with Small, Minority, Women Owned Businesses	Grantees shall take affirmative steps to encourage contracting with small minority and female owned business enterprises when possible as sources of supplies, equipment, construction, and services.
2 CFR 200.322	Domestic Preferences	As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
2 CFR 200.323	Procurement of Recovered Materials	Must comply with section 6002 of the Solid Waste Disposal Act, procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.
2 CFR 200.324	Contract Cost and Price	Must conduct a cost or price analysis in connection with every procurement action more than the Simplified Acquisition Threshold (\$350,000), including contract modifications.
2 CFR 200.325	Federal Awarding Agency/Pass-Through Entity Review	Must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.
2 CFR 200.326	Bonding Requirements	All bidders must provide a bid guarantee equivalent to five percent of the bid price, secure a performance bond for 100 percent of the contract price, and secure a payment bond on the part of the contractor for 100 percent of the contract price.

METHODS OF PROCUREMENT

Select the most appropriate method based upon the need and nature of the services or products required. The award must be given to the lowest responsive and responsible bidder. In situations where the contract will not be awarded to the lowest bidder or all bids are rejected, a justification must be submitted to the assigned CDBG Project Manager and written approval from WVDED must be issued prior to awarding the contract.

Procuring Goods and Professional Services Other than Architecture and Engineering

Micro Purchase Procurement

1. \$14,999.99 or less.
2. No quotes or advertisements required.
3. Purchasing is reviewed by combining all transactions from the same vendor.

Required Documentation:

- a. Subrecipient should have an itemized budget breaking down the required WVDED budget line items to show how each line item is allocated into single transactions per vendor type.

Small Purchase Procurement: Non-Construction

1. \$15,000.00 to \$349,999.99.
2. May be used for rehabilitation programs.
3. Price or rate quotations must be obtained from an adequate number of qualified sources- at least three or more.
4. Subrecipients must place copies of all written bids in the project file to document those firms or individuals solicited and their responses. Emailed bids are acceptable.
5. No advertisement is required.
6. Lowest quotation received must be awarded.

Required Documentation:

- a. Purchase Order or Contract.
- b. Invoicing.
- c. Quotes (3 or more)
- d. Non-Conflict of Interest Form.
- e. Written documentation, including the Small Purchase Procurement Checklist, that addresses the following:
 - i. When did the Subrecipient call?
 - ii. What product/specifications did the Subrecipient inquire about?
 - iii. What businesses/vendors did the Subrecipient call?
 - iv. What was the answer received from each business/vendor?

Competitive Procurement: Construction and Demolition

Sealed Bids - A procurement method in which bids are publicly solicited, and a firm fixed-price contract (lump sum or unit price) is awarded to the eligible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

Any or all bids may be rejected if there is a sound documented reason. **The sealed bids method (Request for Quotation) must be used for procuring demolition at or under \$349,999.99 due to multiple contractors needed for asbestos removal and actual demolition.**

For sealed bidding to be feasible, the following conditions must be present:

1. A complete, adequate, and realistic specification or purchase description is available.
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. The procurement lends itself to a firm and fixed price contract and the selection of the successful bidder can be made principally based on price.

Competitive Procurement-**\$349,999.99** or Less

1. Publish a **Class I legal advertisement** (posted once)
2. Scope is clearly defined,
3. Price and specifications are the only factors used when determining the evaluation,
4. Not procuring Architect/Engineering services, as this method cannot be used for procuring those.
5. RFQs request bidders to provide qualifications and/or experience, as well as an hourly fee for services.

Required Documentation

Before a contract is awarded:

- a. Tear Sheet of Class I Legal Ad.
- b. Affidavit of Advertisement.
- c. Bid tabulation sheet.
- d. Proof of contacting unsuccessful bidder.
- e. Cost Reasonableness Form.
- f. Non-Conflict of Interest Form.
- g. Draft of Proposed Contract.

After a contract awarded, before signature:

- h. Grantee Debarment Form
- i. Successful vendor's contract.
- j. WV Division of Economic Development Terms & Conditions for Professional Services found on page 24 of this manual must be included in the contract, signed by the successful vendor and Subrecipient
- k. Contract amendments, if any, and rationale for amendments

Competitive Procurement-**\$350,000.00** or More

Competitive Procurement of \$350,000 or more allows for two ways of requesting the provision of services: Request for Proposals and Request for Quotations.

RFPs - Request for Proposals

Complete RFP when:

1. Scope is not clearly defined,
2. A firm fixed-price contract (lump sum) is allocated for needed services.

For RFPs:

1. Advertisement must be a Class II Legal Ad (posted twice);
2. The advertisement should specify that the project is undertaken with CDBG, CDBG-CV, CDBG-MIT, or RHP funds, and that all federal requirements are applicable (2 CFR 200.318-200.326)
3. Two or more qualified bids must be received.
 - a. If RFP is advertised and only one bid is received, the Subrecipient must advertise again. If only one bid is still received, they can then award the contract to that successful bidder.
4. All bids received must be evaluated.
5. Evaluation/selection committee must consist of 3-5 individuals with subject matter expertise.
6. Each selection committee member must sign a conflict-of-interest statement form.
7. Identify a formal technical evaluation or selection method for determining responsible vendors. The selection method must be documented and stated in the advertisement. The selection method must include scoring criteria, such as:
 - a. specialized experience or technical expertise
 - b. past record of performance
 - c. capacity to perform the work within time limitations
 - d. familiarity with the type of problems applicable to the project- as well as price
8. Selection committee rank bids and selects the three most qualified and reasonable bids.
9. Unsuccessful vendors should be notified promptly in writing and documentation of notification retained in the project files.
10. Selection committee interviews the three most qualified firms, then ranks them.
11. Bidder with highest ranking and meets the minimum qualifications at the lowest price is the successful bidder- awarded.
12. Document cost reasonableness prior to executing contract.

Required Documentation for RFP

Before a contract is awarded:

- a. Negotiation method that describes how procurement process was determined.
- b. Tear Sheet of Class II Legal Ad.
- c. Affidavit of Ad Publication
- d. Scoring Documentation:
 1. Description of method,
 2. Copy of scoring criteria (i.e., years of experience, past performance, capacity, etc.),
 3. List of selection committee members, title and attendance sheet,
 4. Score sheet for each member of the selection committee
 5. Scoring tally
- e. Non-Conflict of Interest Statement from each scoring committee member
- f. Proof of contacting unsuccessful bidders.
- g. Cost Reasonableness Forms

- h. Draft of Proposed Contract.

After a contract is awarded, before signature:

- i. Grantee Debarment Form
- j. Successful vendor's contract.
- k. WV Division of Economic Development Terms & Conditions for Professional Services found on page 24 of this manual must be included in the contract, signed by the successful vendor and Subrecipient Contract amendments, if any, and reasoning for amendments.

RFQs - Request for Quotations:

Complete RFQ when:

- 1. Scope is clearly defined,
- 2. Price and specifications are the only factors used when determining the evaluation,
- 3. Not procuring Architect/Engineering services, as this method cannot be used for procuring those.
- 4. RFQs request bidders to provide qualifications and/or experience, as well as an hourly fee for services.

For RFQs:

- 1. Advertisement must be a ***Class II Legal Ad*** (posted twice).
- 2. The advertisement should specify that the project is undertaken with CDBG, CDBG-CV, CDBG-MIT, or RHP funds, and that all federal requirements are applicable (2 CFR 200.318-200.326)
- 3. Two or more qualified bids must be received.
 - b. If RFQ is advertised and only one bid is received, the Subrecipient must advertise again. If only one bid is still received, they can then award the successful bidder.
- 4. Project team reviews all bids submitted for accuracy and completeness
- 5. Project team creates the bid tabulation sheet.
- 6. Bidder with lowest price is the successful bidder- awarded.
- 7. Unsuccessful vendors should be notified promptly in writing and documentation of notification retained in the project files.
- 8. Document cost reasonableness prior to executing contract.

Required Documentation for RFQ

Before a contract is awarded:

- a. Tear Sheet of Class II Legal Ad.
- b. Affidavit of Advertisement.
- c. Bid tabulation sheet.
- d. Proof of contacting unsuccessful bidder.
- e. Cost Reasonableness Forms.
- f. Non-Conflict of Interest Form.
- g. Draft of Proposed Contract.

After a contract is awarded, before signature:

- h. Grantee Debarment Form
- i. Successful vendor's contract.
- j. WV Division of Economic Development Terms & Conditions for Professional Services found on page 24 of this manual must be included in the contract, signed by the successful vendor and Subrecipient Contract amendments, if any, and reasoning for amendments.

For any services procured prior to the award of CDBG, CDBG-CV, CDBG-MIT, or RHP funds to any project type, the Subrecipient is responsible for ensuring all required forms in this Chapter are included in the contract with the successful bidder. All required documentation in subsections above (see iv. and v.) must be dated the same date as the executed contract between the Subrecipient and the successful bidder/vendor.

If a Subrecipient plans to apply for CDBG, CDBG-CV, CDBG-MIT, or RHP funding the project, the Subrecipient must ensure all services are procured in compliance with 2 CFR 200.318-200.326 and this policy manual.

In compliance with 2 CFR 200.324, cost analysis is required for all procurement methods. The Cost Reasonableness Form – achieves the cost analysis requirement; therefore, Subrecipients must ensure this is completed for all procurement. Price Analysis is only needed when procuring through sole source.

Design-Build Procurement

Contract between an agency and a design-build firm to furnish the architectural, engineering, and related services as required for a given public project and to furnish the labor, materials and other construction services for the same public project. *Design-Build cannot be used with funding provided through the State of West Virginia CDBG, CDBG-CV, CDBG-MIT and RHP Programs.*

Sole Source Procurement

Proposal from only one source or, after solicitation of several sources, competition is determined to be inadequate.

1. Projects of any dollar threshold where one of the following circumstances exists:
 - a. The item or service was only available from a single source,
 - b. A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement,
 - c. Competition was determined to be inadequate after receiving proposals from numerous sources,
2. No monetary threshold determines the requirements for this procurement type (no dollar amount tied to level of requirements).
3. Subrecipients/project administrators can simply call specialized individuals/organizations and use their services due to the need being so specific/different.
4. A pre-existing contract with a vendor is not sufficient reason to use sole source procurement.
5. Re-using a vendor by letting them “piggyback” on their existing contract is not permitted because it discourages fair and open competition.

Please note, noncompetitive procurements must be awarded in full accordance with 2 CFR 200.320(c).

Required Documentation:

- a. Email WVDED Project Manager describing what needs to be procured and why those services are needed based on the situation.
- b. Must seek approval from WVDED Project Manager only prior to sole source at which time WVDED Program Manager will request documentation.
- c. A price analysis is always needed for sole source procurement. A price analysis includes a review and evaluation of a proposed price without evaluating separate cost elements where three or more responses are received.

Professional Services by Individuals Employed by the Subrecipient

Professional individuals who are hired on a full-time basis to work for the Subrecipient. These employees meet the IRS definition of an employee. Procurement procedures do not apply to employees of the Subrecipient who are acting in their official capacity and are eligible to be reimbursed to the extent that:

1. They are reasonable for the services provided.
2. They follow an appointment made in accordance with state and local laws; and
3. The amount of compensation charged to the grant will be based on payroll. Employees that are hired through a competitive process to work for the Subrecipient on a contract basis. The advertisement must clearly state that the employee will work on CDBG, CDBG-CV, CDBG-MIT, or RHP project(s) in addition to normal duties.

Architecture and Engineering (A&E) Procurement

The procurement of A&E services shall meet the requirements set forth in WV Code 5G-1-4. WV Code 5G prohibits the use of price as evaluation criteria. Instead, the price is to be negotiated **AFTER** the selection of the architect/engineer. Due to this requirement, Request for Proposals (RFP) must always be used for the procurement of A&E services.

Competitive A&E Procurement- ~~\$249,999.99~~ or Less

1. RFP - Class I Legal Advertisement (posted once).
2. Subrecipient/project administrator conducts (and documents) discussions with three or more professional firms solicited based on known or submitted qualifications for the assignment prior to the awarding of any contract.
3. If special circumstances exist and seeking competition is not practical, the subrecipient/project administrator may obtain the State's prior approval to select a firm based on previous satisfactory performance and knowledge of the agency's facilities and needs.
4. After selection, the subrecipient/project administrator offers or develops the scope of services required and negotiates a contract.

Required Documentation

Before a contract is awarded:

- a. Tear Sheet of Class I Advertisement.
- b. Affidavit of Class I Advertisement
- c. Scoring Documentation:
- d. Description of method
- e. Copy of scoring criteria (i.e., years of experience, past performance, capacity, etc.)
- f. List of selection committee members, title and attendance sheet
- g. Scoring tally
- h. Proof of contacting unsuccessful bidder.
- i. Non-Conflict of Interest Statement from each scoring committee member
- j. Cost Reasonableness Form

After a contract awarded, before signature:

- k. Grantee Debarment Form
- l. Successful vendor's contract.
 - i. WV Division of Economic Development Terms & Conditions for Professional Services found on page 24 of this manual must be included in the contract, signed by the successful vendor and Subrecipient Contract amendments, if any, and reasoning for amendments.

Competitive A&E Procurement- ~~\$250,000.00~~ or More

1. RFP - Class II legal advertisement (posted twice).
2. WV Code Chapter 5G prohibits the use of price as evaluation criteria. Instead, the price is to be negotiated after the selection of the architect/engineer.

3. When procurement is needed, WVDED encourages firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project.
4. A committee of three to five representatives shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service, provided that:
 - a. If such circumstances exist, such that seeking competition could result in a compromise to public safety, significantly increase costs, or an extended interruption of essential services, the Subrecipient may, with the prior approval of the WVDED, select a firm based on previous satisfactory performance and knowledge of the agency's facilities and needs.
 - b. Each selection committee member must sign a conflict-of-interest statement form.
5. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment.
6. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services or both.
7. Should the Subrecipient be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice may commence. Should a satisfactory contract not be negotiated with the second firm, the Subrecipient should contact the third firm. Should a satisfactory contract not be negotiated with any of the selected professional firms, the Subrecipient shall select additional professional firms in order of their competence and qualifications and shall continue negotiations in accordance with this section until an agreement is reached.
8. Please note, additional requirements listed in WV Code 5G may be applicable to one's project that are not listed in this section. It is the responsibility of the Subrecipient to read all requirements set forth in WV Code 5G 1-4 to determine all requirements that have been met.
9. After selection, the subrecipient/project administrator offers or develops the scope of services required and negotiates a contract.

Required Documentation

Before a contract is awarded:

- a. Tear Sheet of Class II Ad
- b. Scoring Documentation:
 - i. Description of method.
 - ii. Copy of scoring criteria (i.e., years of experience, past performance, capacity, etc.).
 - iii. List of selection committee members, title and attendance sheet.
 - iv. Score sheet for each member of selection committee.
 - v. Scoring tally.
- c. Proof of contacting unsuccessful bidder.
- d. Non-Conflict of Interest Statement from each scoring committee member
- e. Cost Reasonableness Form

After a contract awarded, before signature:

- f. Grantee Debarment Form
- g. Successful vendor's contract.
 - i. Terms & Conditions for Professional Services – must be included in the contract, signed by the successful vendor and Subrecipient.
- h. Contract amendments, if any, and reasoning for amendments.

Negotiation of Fees – Architects/Engineers

WV Code 5G prohibits the use of price as evaluation criteria. Price is to be negotiated after the selection of the architect/engineer. Due to this requirement, a Cost Reasonableness Form must be executed, documented with supporting documentation, and dated prior to the execution date of the contract.

In addition, please note that "cost plus a percentage of cost" and "percentage of actual construction cost" contracts are not acceptable and must not be used. ***All contracts must be lump sum with a "not-to-exceed" clause.***

Price analysis is a review and evaluation of a proposed price without evaluating separate cost elements where 3 or more responses are received.

DEBARMENT REVIEW - VERIFICATION OF ELIGIBILITY

When a successful vendor has been selected, a debarment review must be conducted prior to contract execution. Entities must be registered with [SAM.gov](https://sam.gov) to qualify for federal awards which are reported to the public through [USASpending.gov](https://usaspending.gov). All entities need a UEI to apply for funding. The Federal Debarment review may be conducted at: [SAM.gov](https://sam.gov). The verification must be placed in the project file.

The State Debarment review may be conducted at: www.state.wv.us/admin/purchase/Debar.html. The verification must be placed in the project file.

EXECUTING PROFESSIONAL SERVICE OR CONSTRUCTION CONTRACTS

The Subrecipient must prepare a contract with the successful firm or individual. The contract must include all the following provisions and those outlined in 2 CFR 200 Appendix II as applicable.

General Administrative Provisions

- a. Effective **START** and **END** date of contract.
- b. Blanket contracts may not be used.
- c. Names and addresses of city/county and firm or individual.
- d. Names of representatives of Subrecipient and firm or individual who will act as liaison for administration of the contract.
- e. Citation of the authority of the Subrecipient under which the contract is entered into and source of funds.
- f. Conditions and terms under which the contract may be terminated by either party and remedies for violation/breach of contract.

Scope of Services

- a. Detailed description of extent and character of the work to be performed.
- b. **TIME FOR PERFORMANCE AND COMPLETION OF CONTRACT SERVICES**, including project milestones, if any
- c. Specification of materials or other services to be provided by both parties, i.e., maps, reports, printing

Compensation Method

- a. Provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract.
- b. All contracts must be written as lump sum not-to-exceed contracts.

Federal Standards Provisions

- a. Title VI Clause.
- b. Access to Records.
- c. Conflict of Interest.
- d. Section 3 (if applicable, the amount of the assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000).
- e. Section 109 of the Housing and Community Development Act of 1974.

Some professional service firms and individuals uniformly use standardized contracts. Although these contracts may contain some or most of the requirements, the Subrecipient must ensure that all Federal Standards Provisions are incorporated into the contract. The inclusion of these provisions is accomplished by adding the required WV Division of Economic Development Terms & Conditions for Professional Services found on page 24 of this manual.

Architectural/Engineering contracts for Public Service Districts (PSD) must be approved in advance by the West Virginia Public Service Commission (WVPSC).

After negotiating the contract, it should be submitted to the appropriate governing body of the Subrecipient for approval (by resolution) and then executed by both the Subrecipient and the firm or individual. Award may be made to the responsible vendor whose proposal will be advantageous to the Subrecipient- price and other factors considered. Unsuccessful vendors should be promptly notified in writing that they were unsuccessful.

RECORD RETENTION REQUIREMENTS

The Subrecipient must include in the project file and monitor the contract to ensure that the contract is completed in a satisfactory and timely manner. The following must be in the file:

- a. Description of method used to select consultants.
- b. Qualification statements, RFPs, and proposal(s) received.
- c. Negotiation methods.
- d. Cost and pricing data supporting the negotiated fee.
- e. All forms and attachments listed in this Chapter for each service/vendor procured.
- f. Verification of vendor eligibility.
- g. The contract for services.
- h. Records of all payments and supporting documentation.
- i. Contract amendments, if any, and rationale for amendments.

ADDENDUM TO PROFESSIONAL SERVICE CONTRACTS

All addenda issued to a professional services contract funded in whole, or in part, with CDBG, CDBG-CV, CDBG-MIT, or RHP funds must be approved by the WVDED prior to execution.

APPENDIX



Non-Conflict of Interest Form

Completion Instructions

WVDED requires all evaluators of solicitations, despite the type of transaction, to sign

a Certification of Non-Conflict of Interest, in accordance with the West Virginia Code §5A-3-31. By signing this certification, the evaluator(s), advisor(s) and the agency procurement officer attest that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified herein with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the subrecipient.

The procurement officers should discuss the non-conflict of interest issue with potential committee members to ensure that individuals who may have a conflict are not chosen to participate as evaluation committee members. Please note that this requirement applies to all transaction types.

The Non-Conflict of Interest Form must be submitted to WVDED with procurement documentation.

CERTIFICATION OF NON-CONFLICT OF INTEREST

West Virginia Code § 5A-3-31: "It shall be unlawful for any person to corruptly combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of commodities or printing to the state under the provisions of this article if the purpose or effect of such combination, collusion or conspiracy is either to (1) lessen competition among prospective vendors, or (2) cause the state to pay a higher price for such commodities or printing than would be or would have been paid in the absence of such combination, collusion or conspiracy, or (3) cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors. Any person who violates any provision of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, and be fined not exceeding five thousand dollars."

West Virginia Code § 6B-2-5(b)(1): "A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person." West Virginia Code § 6B-2-5(d)(1): "[N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control....."



The individual(s) listed below have been charged to evaluate or serve as members or advisors of an evaluation committee for the solicitation as specified

[_____]

By signing this form, each individual acknowledges that: (1) his or her service on the evaluation committee is not in violation of West Virginia Code § 5A-3-31, § 6B-2-5, or any other relevant code section; (2) his or her service on the evaluation committee does not create a conflict of interest with any of the participating vendors; and (3) he or she has not had or will not have contact relating to the solicitation identified above with any participating vendors between the time of the bid opening and the award recommendation without prior approval of the Purchasing Division.

Name/Title

Agency

Signature

Date

State of West Virginia: Community Advancement and Development
Conflict of Interest Disclosure



Conflict of Interest Disclosure Form

Note: A potential or actual conflict of interest exists when commitments and obligations are likely to be compromised by the applicant's or agent's other material interests, or relationships (especially economic), particularly if those interests or commitments are not disclosed. This Conflict-of-Interest Form should indicate whether the applicant or agent has an economic interest in, or acts as an officer or a director of, any outside entity whose financial interests would reasonably appear to be affected by the awarding of federal funding. The applicant or agent should also disclose any personal, business, or volunteer affiliations that may give rise to a real or apparent conflict of interest. Relevant Federally and organizationally established regulations and guidelines in financial conflicts must be abided by to consider awarding federal funds.

Applicant/Agent Name: _____ Date: _____

Program: _____

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest:

☐ I have no conflict of interest to report.

I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own:

- 1.
- 2.
- 3.

I hereby certify that the information set forth above is true and complete to the best of my knowledge. WARNING: Any person who knowingly makes a false claim or statement to the Department of Housing and Urban Development (HUD) may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729. Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willfully making false or fraudulent statements to any department of the United States Government.



Form Number: 4

West Virginia Division of Economic Development

Grantee (Subrecipient) Debarment Review Certification

Subrecipient				Project Number	
Project Name					
Address				Phone	
City		State		Zip Code	

Debarment Review Completed By	
Title of Reviewer	
Reviewer's Organization	
Chief Elected Official	
Title of Chief Elected Official	

By signing this certification, both the Reviewer and the Chief Elected Official certify all necessary actions were taken to complete the debarment check and that the Subrecipient listed above is not suspended or debarred from conducting business with, or receiving funding from, the United States government.

Signature of Reviewer

Date

Signature of Chief Elected Official

Date

***Please submit a copy of this Certification to the West Virginia Development Office.
Keep the original, signed Certification in the project file.***

For additional information, please contact WVDED at 304-558-2234



Form Number: 4

**West Virginia Division of Economic Development
Grantee (Subrecipient) Debarment Review Certification**

**West Virginia
CONTRACTOR DEBARMENT REVIEW CERTIFICATION**

SAM.gov and State Certification Regarding Debarment and Suspension Instructions

All Grantees will be required to conduct debarment reviews on all sub-recipients and contractors receiving funds. These checks will be completed by using the form provided. The completed form should be placed in your records in a separate folder. Two reviews are required:

1. Federal System:

Grantees should use the System for Award Management (SAM) website, www.sam.gov, to determine if the potential contractor is excluded from receiving Federal contracts.

2. State System:

Grantees should use the Division of Purchasing website to determine if the potential contractor is excluded from receiving State contracts. www.state.wv.us/admin/purchase/Debar.html.

For proposed sub-recipients, the checks must be completed prior to submission of the application. Upon award of grant funds, reviews must be completed prior to signing a contract for services.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733).

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify any of the statements in this certification, such prospective shall attach an explanation to this proposal.



Cost Reasonableness Form

Per 2 CFR 200 the cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally funded. In determining reasonableness of a given cost, consideration must be given to the following:

1. Is the cost of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award?

☐Yes ☐No

2. Are the goods or services comparable to market prices for the geographic area?

☐Yes ☐No

3. What are the comparable goods and services cost for your area? Below, list goods and services that have been procured that have similar scopes and prices. Please identify the date procured, vendor, price, and any other information that supports cost reasonableness. Attach additional pages as necessary.

4. Did the individuals concerned act with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government?

☐Yes ☐No

5. Did the procurement significantly deviate from your established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost?

☐Yes ☐No

If yes, explain:

Signature of Authorizing Official

Date

Printed Name

Title

Required Contract Provisions

Required Contract Provisions

All contracts executed between the Subrecipient and a contractor must include the following program requirements:

- Performance requirements and penalties.
- Project schedule including the performance period and completion date.
- Award Amount.
- Subrecipients must ensure contracts do not contain any cost plus or incentive savings provisions. No contracts must make reference to compensation adjustments for cost plus or incentive savings provisions.
- All Section 3 covered contracts shall include the Section 3 clause (2 CFR 135.38); and

Other Federally Required Provisions. The Subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards (2 CFR 200.326).

1. **Remedies (2 CFR 200 APPENDIX II (A)):** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. **Termination for cause and for convenience (2 CFR 200 APPENDIX II (B)):** All contracts in excess of \$10,000 must address termination for cause and for convenience by the Subrecipient including the manner by which it will be affected and the basis for settlement.
3. **Rights to Inventions Made Under a Contract or Agreement (2 CFR 200 APPENDIX II (F)):** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
4. **Debarment and Suspension (Executive Orders 12549 and 12689) (2 CFR 200 APPENDIX II (H)):** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

5. **Records of non-Federal entities (2 CFR 200.336):** The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the State of West Virginia, the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.
6. **Record Retention (2 CFR 200.333):** Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a Subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:
- a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
 - b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
 - c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
 - d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
 - e) Records for program income transactions after the period of performance. In some cases, Subrecipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
 - f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - g) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
 - h) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

7. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR 200.321):

- a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- b) Affirmative steps must include:
 - i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
 - ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
 - iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
 - iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
 - v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

8. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)(2 CFR 200 APPENDIX II (D)): When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

9. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (2 CFR 200 APPENDIX II (E)): Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance

with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

10. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
11. **Architectural Barriers Act of 1968 (24 CFR 570.606):** Every building or facility (other than a privately owned residential structure) designed, constructed or altered with funds made available under this part, shall comply with the requirements of the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117, 1-R 19 subject to the exceptions contained in 41 CFR Subpart 101-19.604, issued pursuant to the Architectural Barriers Act of 1968, 42 USC-4151. Procurement procedures and Contracts for the design, construction alteration (including rehabilitation) of public or private structures subject to this requirement should include provisions obligating the Contractor to comply with the Specifications.
12. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended (2 CFR APPENDIX II (G)):** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
13. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)(2 CFR 200 APPENDIX II (I)):** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
14. **Solid Waste Disposal Act (2 CFR 200 APPENDIX II (J)):** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and

Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Subrecipient Signature

Date

Vendor Signature

Date