

## **Section 6: Procurement**

All recipients of federal grant funds are required to have written procurement procedures. These procedures must address the four types of procurement discussed herein. Grantees are also required to have a written Code of Conduct which specifically prohibits elected officials, staff, or agents from personally benefiting from NSP procurements; it must prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors; and it must provide sanctions or penalties for violations of the Code of Conduct by either city/county officials, staff or agents, or by contractors or their agents.

All procurements, regardless of dollar amount, must be conducted to provide “maximum open and free competition.” Many times competition can be restricted by organizational conflict of interest or noncompetitive practices among contractors. Grantees should be alert to issues of this nature that may adversely affect procurement practices.

Disadvantaged Business Enterprise firms (DBE’s) must be solicited on all procurement in a NSP project, regardless of the size or type of contract.

### **I. PROCUREMENT PROCEDURES**

The State of Kansas Community Block Grant program has elected to adopt Public Law 103-355 as the procurement procedures applicable to the NSP program. The only exception to adopting Public Law 103-355 in its entirety is that the maximum dollar allowance under small purchases shall be \$25,000 in lieu of the \$100,000 allowance under PL 103-355. The procedures outlined below are in accordance with this law.

If NSP funds are used to pay for a product or service, or any part thereof, NSP procurement procedures apply unless the local procurement policy is stricter. If NSP funds are not used for any part of a contract, the grantee’s written procurement procedures may apply.

The recipient’s procurement procedures must describe how services or supplies are to be obtained. The procurement policy should address at a minimum the following requirements:

- Procurements should be reviewed to avoid unnecessary and duplicate purchases and to ensure costs are “reasonable.”
- Invitation for bids or requests for proposals must be clearly written and describe the technical requirements of the equipment or services.
- Positive effort must be made to use small, disadvantaged business enterprises.
- The method of contracting (fixed price, cost plus fixed fee, purchase orders, etc.) should be appropriate. Cost plus percentage of cost contracts must be specifically prohibited if NSP funds are involved in a project.

Four methods of procurement are allowed by PL 103-355: small purchases; competitive sealed bids; competitive negotiations; and noncompetitive negotiations. Bonding requirements for contracts are included herein.

A. Small Purchases

Small Purchases is a relatively simple and informal method used where goods or services do not cost in the aggregate of more than \$25,000.

1. Price or rate quotations should be obtained in writing from an adequate number of qualified sources (generally at least three sources). Written specifications should be provided to assure all responders are bidding on the same product or service. If the dollar amount is less than \$500, phone solicitation is allowed. A public bid opening may be held on a small purchase, i.e., housing rehabilitation, if the situation warrants it.
2. Documentation regarding the businesses contacted and the prices submitted should be maintained.
3. Written documentation regarding basis for selection and cost should be maintained.
4. Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required for all construction contracts over \$2,000.

B. Competitive Sealed Bids

Competitive sealed bids are initiated by publishing an Invitation for Bids (IFB) when the cost is estimated to be over \$25,000. Adequate time should be allowed for preparation of bids.

1. Detailed specifications for the goods or services to be procured must be prepared. The primary basis for award is cost.
2. All bids received must be tabulated and reviewed according to the written criteria given to prospective bidders.
3. The contract awarded must be a firm, fixed-price contract (lump sum or unit price). **The negotiations with the low bidder are not allowable under the NSP program. (This has always been the CDBG/HOME policy.)**
4. Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required, after confirming the contractor is not on the Federal debarred list (see Labor Standards Section).
5. All unsuccessful bidders must be notified in writing.

### C. Competitive Negotiations

Competitive negotiations are initiated by making public a Request for Proposals (RFP) or a Request for Qualifications (RFQ). Although newspaper publication is not required, it may be used if an adequate number of service providers are available in the circulation area. **At a minimum, all qualified firms should be notified.** The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selection (this is usually applicable only for architectural and engineering services).

1. In both the RFP and RFQ, the services to be procured are clearly defined, as are the factors to be used in evaluation and selection. A written basis of selection must be prepared.
2. All proposals received are to be reviewed according to the written criteria given to prospective bidders and the review should be in writing, i.e., basis of selection must be documented.
3. For RFQ's, an invitation is made to one or more respondents to negotiate a price or fee.
4. Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.
5. All unsuccessful bidders must be notified in writing.

### D. Non-Competitive Negotiations

Non-competitive negotiations can be used only when (1) the use of competitive negotiations is not feasible, such as only one supplier, (2) there is some public emergency, or (3) the results of the competitive negotiations are inadequate.

1. Negotiations are conducted with the selected company regarding a scope of work and price.
2. Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

**Commerce must approve all types of procurement prior to award when only one response is received from the procurement efforts or prior to use of non-competitive negotiation.**

## II. PROCURING PROFESSIONAL AND PERSONAL SERVICES CONTRACTS

No engineering or architectural firm or any principal or employee thereof can perform both administrative and engineering/architectural services on a grant, regardless of the source of payment of either. Engineering, architectural, or administrative services may not be eliminated as a line item activity in the project budget form for purposes of circumventing this policy. The grantee has the option of administering the NSP program themselves, contracting with the regional planning commission, or hiring a private consultant. The grantee is reminded that all applicable procurement procedures must be followed if the consultant is paid with NSP funds with the exception of the four regional planning commissions within the State. Administrators for all NSP/CDBG awards must be certified through the CDBG Administrators' Certification process. Commerce should be contacted if verification is needed.

Prior to executing an administrative contract, the grantee shall review its content to ensure that the required provisions are included. Exhibit I, "Standard Form of Agreement between Owner and Consultant for Professional Services" is included as a sample contract. This may need to be re-worded or deleted—administrators have been "assigned"

- A. Procedure – The competitive negotiation method is the normal method used to procure professional services.
  1. A Request for Proposals (RFP) or a Request for Qualifications (RFQ) is issued. The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selection (generally only for engineering/architectural services). The first step in both processes is to determine which services are needed. The services and the factors to be used in evaluation and selection must be clearly defined.
  2. If a statement of qualifications is used, each submittal must be reviewed and ranked according to previously established selection criteria of qualifications. This review must be documented in writing. Upon determination of the best statements, an invitation is made to one or more respondents to negotiate a price or fee. The reason the firm is chosen and that the price established is reasonable must be documented.
  3. If an RFP is issued, it should specify the scope of services to be provided and type of contract to be used: cost reimbursement, fixed price, or per diem contract. Cost plus a percentage of cost contracts cannot be used.

4. The RFP should also specify that cost and price data is required to support the proposed cost, state anticipated start and completion dates, and list evaluation criteria that will be used in ranking proposals. Additionally, any materials such as reports, maps, and site plans to assist interested firms in preparing responsive proposals should be provided. If the project is complicated, a pre-bid conference can be held with qualified and interested parties to discuss the project.
  5. The RFP or RFQ should also include:
    - a. Scope of services, which includes 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, e.g., maps, reports, printing, etc.
    - d. Method of compensation, amount of contract, and provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract.
  6. State and Federal Standard Provisions. All professional contracts must state that the contracting firm will abide by the laws and regulations described in the “Applicable Laws and Regulations” sections of the Kansas Small Cities CDBG Program Guidelines. **SAMPLE COPIES OF AN RFQ AND A RFP ARE INCLUDED HEREIN as Exhibit II - Procurement.**
- B. Review Process – After response of either statements of qualifications from an RFQ or proposals in response to an RFP, the review process can begin according to the established selection criteria.

The review process should be uniform and well documented. The preferred method is that the review be conducted by a committee composed of at least three people who have technical knowledge of the type of project you are considering. However, these reviewers must not have apparent conflicts of interest with any of the firms or individuals under review. Examples are family relationships, close friendships, or business dealings. Some of the evaluation criteria to be considered includes:

1. Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and complexity of the project.

2. Past record of performance on contracts with the locality and other clients, including quality of work, timeliness, and cost control.
3. Capacity of firm to perform the work within time limitation, taking into consideration the current and planned work load of the firm.
4. Familiarity of the firm with the type of problems applicable to the project.

The relative importance of each of these factors can be determined beforehand by assigning value to each (for example, specialized experience may be assigned 40 points out of a total possible 100 points). Evaluation consideration for local firms can be established if familiarity with local conditions is an important element for a successful project. Selection criteria should be shared with all prospective bidders. No criteria may be established which would eliminate specific vendors.

C. Contract Revisions – Once a firm is chosen and the basis of selection is documented along with the reasonability of cost, the preparation of a contract with the successful individual or firm may be completed. The contract must include the following general administrative provisions:

1. Effective date of contract.
2. Names and addresses of the locality and firm.
3. Names of representatives of locality and firm who will act as liaison for administration of the contract.
4. Citation of the authority of the city/county under which the contract is entered into and source of funds.
5. Conditions and terms under which contract may be terminated by either party, both termination for cause and termination for convenience and remedies for violation/breach of contract.

### **III. COMPETITIVE BIDDING**

When a cost estimate for purchase of supplies or equipment or for construction is in excess of \$25,000, the Competitive Bidding process is applicable.

A. Procedure

1. An Invitation for Bids (IFB) notice for all procurements requiring sealed bids is issued. This notice should be published at least once in at least one official newspaper of general circulation within the community 30 days before bid date or an adequate time to allow bid preparation. Bids from responsible prospective bidders should be solicited by sending them a copy of the notice. If the project is complicated, a pre-bid conference may be held with qualified and interested parties to discuss the project.
2. The IFB should include a general description of the goods or services to be procured, the location where bids or specifications may be secured, and the time and place for opening bids. Bid award must be made to the lowest responsible bidder.

The newspaper notice must also contain language which calls to the attention of bidders all applicable requirements which must be complied with such as: Section 3 of the 1968 Housing Act, Section 109 of the 1984 Housing and Community Development Act, the Civil Rights Act of 1964, and Executive Order 11246.

3. The sealed bids should be opened in public at the time and place stated in the IFB and tabulated at that time.

B. Review Process – The following evaluation criteria may be used with varying weights to determine if the bidder is a responsible bidder.

1. Character, integrity, reputation, judgment, and experience of the firm.
2. Ability of the vendor to provide the material or service promptly or within the time specified.
3. Quality of performance by the vendor on previous contracts, orders, or services.
4. Ability of the vendor to provide future maintenance and service for all equipment purchased from the vendor.
5. The grantee has the responsibility to prove or disapprove the “responsible” bidder criteria. If a lowest bidder is rejected, he/she must be notified in writing and the reason for rejection of his/her low bid fully stated. Reasons for rejection must be documented.

The review should be thorough, uniform, and well documented. Once a contract has been awarded, all unsuccessful bidders must be informed in writing of the bid award.

When a locality receives only one response to any procurement solicitation, including competitive bidding, the solicitation should be reviewed to determine whether it was unduly restrictive or geared to a particular contractor and must be submitted to the Kansas Department of Commerce for approval prior to awarding the contract.

The community may cancel an Invitation for Bids or reject all bids if it is determined in writing that it is in the best interest of the city.

If it is determined that a rebid is needed for all or part of the bid schedule, the grantee and/or professional should contact the field representative of the area for consultation and guidance.

C. Contract Provisions

1. Once a firm is chosen, preparation of a contract with the successful individual or firm may be carried out. The contract must include all of the previously mentioned provisions: scope of services, contract amount, effective date of contract, method of compensation, and the State and Federal standards described in the “Applicable Laws and Regulations” section of the CDBG Program Guidelines
2. All applicable Labor Standards requirements should be reviewed and administered. (See Labor Standards section.)
3. The statement of work should be prepared by the grantee in accordance with procurement procedures. It must describe as precisely as possible the tasks to be completed, specify timetables for completion, identify the products and/or services to be delivered, and stipulate the method of payment. The statement of work could be used as a tool to measure performance, but only if the desired outcomes are clearly specified in measurable products.
4. Applicable federal regulations are included herein.
5. Bonding requirements are included herein to assure awareness of requirements (see Exhibit III – Procurement).

- D. Maintaining Procurement Files – Grantees must maintain a separate file for each procurement in excess of \$2,000. All files should include copies of advertisements, a list of notified firms, RFP/RFQ, a list of where bid packages were sent, copies of all bids or proposals received, and a written review of the proposals including cost data and the basis of selection. If a contract is non-competitively negotiated, the file should include Commerce’s approval for award. The file must always include a cost and price detail documentation statement explaining the basis of selection. All unsuccessful bidders must be notified in writing, and files should contain copies of letters to that effect.

The primary requirement is that the process of securing services with NSP funds is open, competitive, and well documented.



## **Exhibit I – Procurement**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion. The State of Kansas hereby assumes no responsibility for the legality or content of this document, and it is presented only as a sample for use by CDBG grantees.

**This may be considered a legal document—can we legally change the verbage?????**

### **Standard Form of Agreement Between Owner and Consultant For Professional Administrative Services**

This is an agreement made as of \_\_\_\_\_, \_\_\_\_\_ between \_\_\_\_\_ (Owner and \_\_\_\_\_ (Consultant). The Owner intends to perform a community development project, and the Owner and Consultant in consideration of their mutual covenants herein agree in respect to the performance of professional administrative services by Consultant and the payment for those services by Owner as set forth below. Consultant shall provide professional administrative services by Owner as set forth below. Consultant shall provide professional administrative services for Owner in all phases of the project to which this agreement applies, serve as the Owner’s representative for the project as set forth below, and shall provide professional consultation of services hereunder.

#### **Section 1 – Basic Services for Consultant**

The consultant shall perform professional administrative services as hereinafter stated which include the administration of the Owner’s Community Development Block Grant program, Project # \_\_\_\_\_ The specific services of the Consultant are indicated in Exhibit “A”, “Scope

#### **Section 2 – Owner’s Responsibilities**

The owner shall:

- 2.1 Provide all criteria and full information as to Owner’s requirements for the project and furnish copies of all documents related to the project.
- 2.2 Assist Consultant by placing at his/her disposal all available information pertinent to the project including previous reports and any other data relative to the project.
- 2.3 Give prompt written notice to consultant whenever owner observes or otherwise becomes aware of any development that affects the scope of timing of the consultant’s services.
- 2.4 Bear all costs incidental to compliance with the requirements of Section 2.

#### **Section 3 – Period of Service**

- 3.1 The provisions of Section 3 and the rates of compensation for the Consultant’s services provided for elsewhere in this agreement have been agreed to in anticipation of the orderly and continuous progress of the project through completion.

- 3.2 The Consultant agrees to complete the project by the ending date identified in the owner's "Grant Agreement" with the Kansas Department of Commerce for the Community Development Block Grant program from which part of the project has been financed.
- 3.3 If the Owner has requested significant modifications or changes in the extent of the project, the time of performance of Consultant's services and his/her rates of compensation shall be adjusted appropriately.

#### **Section 4 – Payments to Consultant**

- 4.1 The maximum amount the Owner shall pay the consultant for performance of the agreement shall not exceed \$ \_\_\_\_\_. Compensation will be based on time, expenses, materials, overhead, and fixed fee (if consultant is a for-profit entity) basis documented in a manner acceptable by the Owner. Overhead is allowable in the amount of \_\_\_\_\_ % of \_\_\_\_\_  
The fixed fee shall be \$ \_\_\_\_\_
- 4.2 Consultant shall submit monthly statements for services and expenses incurred at the time of billing. Owner shall make prompt payments in response to consultant's monthly statements.

#### **Section 5 – General Considerations**

- 5.1 The obligation to provide further services under this Agreement may be terminated by either party upon ten days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, through no fault of the terminating party.
- 5.2 The Consultant shall comply with all applicable rules, regulations, laws, and requirements in relation to the Community Development Block Grant program as distributed by the Kansas Department of Commerce.
- 5.3 The Owner and Consultant each bind themselves and their partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations to this Agreement.
- 5.4 Neither Owner nor Consultant shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except as stated in paragraph 5.3 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to or assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Consultant from employing such independent consultants, associates, and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

**Section 6 – Special Provisions and Exhibits**

- 6.1 The following exhibits are attached to and made part of this Agreement.
- 6.1.1 Exhibit A – “Scope of Services”, consisting of \_\_\_\_\_ pages.
- 6.1.2 Part II – “Terms and Conditions”, consisting of \_\_\_\_\_ pages.
- 6.2 This agreement (consisting of pages 1 to \_\_\_\_\_ , inclusive), together with the exhibits identified above, constitute the entire agreement between the owner and consultant and supersede all prior written or oral understandings. This agreement and said exhibits may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

In witness whereof, the parties hereto have made and executed this Agreement as of the day and year first above written.

Owner:

Consultant:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## **Exhibit A – Scope of Service**

The consultant shall complete, in a professional and timely manner, the following services relative to the owner’s Neighborhood Stabilization program. Such actions shall be performed in a manner prescribed by the Kansas Department of Commerce. (Note: Delete inapplicable phrases and initial.)

1. Financial management (accounting, file maintenance, cost documentation, Part 85/A-87 conformance, RFP preparation, and related matters).
2. Environmental review.
3. Labor Standards compliance.
4. Civil Rights compliance.
5. Public participation requirements (owner to pay for public notices).
6. Preparation of contract documents, except for engineering specifications.
7. Preparation of procurement documents for professional and construction contracts and a recommendation of successful proposals or bids.
8. Completion of close-out forms and required performance reports.
9. Preparation of guidelines, procedures, and forms for housing rehabilitation activities.
10. Preparation of guidelines, procedures, and forms for relocation activities, and administration of relocation procedures pursuant to the “Uniform Act”.
11. Administer procedures required by the “Uniform Act” in relation to the acquisition of property.
12. Provide housing rehabilitation inspection services, including work write-ups, bidding, contractor recruitment, recommendations for contractor selection, periodic inspection of homes under construction, final approval, and homeowner counseling.

**(SHOULD BE INCLUDED IN ALL PROFESSIONAL SERVICES CONTRACTS OVER \$10,000)**

## **CONTRACT FOR PROFESSIONAL SERVICES**

### **Legal Document??**

#### **PART II – TERMS AND CONDITIONS**

1. Termination of Contract for Cause: If, through any cause, the Consultant shall fail to fulfill in a timely manner his/her obligations under this contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this contract, the City shall thereupon have the right to terminate this contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant under this Contract shall, at the option of the City, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the City from the Consultant is determined.

2. Termination for Convenience of the City: The City may terminate this contract at any time by giving at least ten days notice in writing to the Consultant. If the Contract is terminated by the City as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this contract is terminated due to the fault of the Consultant, Paragraph 1 hereof relative to termination shall apply.
3. Changes: The City may, from time to time, request changes in the scope of services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the City and the Consultant, shall be incorporated in written amendments to this Contract.
4. Personnel:
  - a. The Consultant represents that he/she has, or will secure at his/her own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of, or have any contractual relationship with, the City.
  - b. All of the services required hereunder will be performed by the Consultant or under his/her supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

- c. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.
5. Assign ability: The Consultant shall not assign any interest on this contract, and shall not transfer any interest in the same (whether by assignment or invitation), without the prior written consent of the City thereto; provided, however, that claims for money by the Consultant from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.
6. Reports and Information: The Consultant, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.
7. Records and Audits: The Consultant shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City or any authorized representative, and will be retained for four years after the expiration of this contract unless permission to destroy them is granted by the City.
8. Findings Confidential: All of the reports, information, data, etc., prepared or assembled by the Consultant under this contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without prior written approval by the City.
9. Copyright: No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant.
10. Compliance with Local Laws: The Consultant shall comply with all applicable laws, ordinances and codes of the state and local governments, and the Consultant shall hold the City harmless with respect to any damages arising from tort done in performing any of the work embraced by this contract.
11. Equal Employment Opportunity: During the performance of this contract, the Consultant agrees as follows:

- a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, sex, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
- b. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- c. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- d. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the City's Department of Housing and Community Development and the Secretary of Labor for purposes of investigation to ascertain with such rules, regulations, and orders.
- f. In the event of the Consultant's non-compliance with the non-compliance clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Consultant will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the City's Department of Housing and Community Development may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City's Department of Housing and Community Development, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
12. Civil Rights Act of 1964: Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
13. Section 109 of the Housing and Community Development Act of 1974:
- a. 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.
14. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities: The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with Part 135 regulations.

The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.



The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The Contractor will certify that any vacant employment positions including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

The Contractor agrees to submit such reports as required to document compliance with Part 135. Non-compliance with the regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

15. Interest of Members of a City: No member of the governing body of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Consultant shall take appropriate steps to assure compliance.
16. Interest of Other Local Public Officials: No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Consultant shall take appropriate steps to assure compliance.
17. Interest of Consultant and Employees: The Consultant covenants that he/she presently has no interest and shall not acquire interest, direct, or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of their services hereunder. The Consultant further covenants that in the performance of this contract, no person having any such interest shall be employed.

SEE SECTION 10 FOR CIVIL RIGHTS REGULATIONS

## **Exhibit II - Procurement**

**(SAMPLE)**

### **REQUEST FOR QUALIFICATIONS**

#### **PROFESSIONAL ENGINEERING SERVICES**

The City of Laketown requests qualifications for engineering services to assist in a proposed NSP project financed with federal funds. The City intends to provide improvements to its municipal water distribution system. Information provided to the City must include:

- (a) The specialized experience and technical competence of the firm with respect to water system improvements or related work;
- (b) The capacity and capability of the firm to perform the work in question, including specialized services, within a period of twelve months beginning January, 2\_\_\_\_;
- (c) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules;
- (d) The firm's proximity to and familiarity with the area in which the project is located; and
- (e) References from all previous clients involved with the firm within the past five years. Ability to begin work immediately and guarantee submittal to Kansas Department of Health and Environment (KDHE) within twelve months plus (c) above shall receive primary consideration.

This information must be submitted no later than \_\_\_\_\_, 5:00 p.m., at Laketown City Hall. For more information, please contact Gerald Brown at (785) 555-9897.

(date)

The City of Laketown is an Equal Opportunity Employer and invites the submission of qualifications from minority and women-owned firms.

(SAMPLE)

## REQUESTS FOR PROPOSALS

### PROFESSIONAL ADMINISTRATION SERVICES

The City of Anytown requests proposals for administrative services to assist in a proposed project financed with \$250,000 in Neighborhood Stabilization Program (NSP) funds. The remainder of the project is being financed by the city's \$300,000 bond issue. The project consists of replacement of 4,500 l.f. of 6" municipal water distribution lines and construction of a 150,000 gallon elevated storage tank.

Administration services shall include, but are not limited to, the implementation of the project in conformance with the following NSP compliance area: environmental review, financial management, procurement, labor standards, equal opportunity/civil rights, citizen participation, acquisition/relocation, and close-out.

Information provided to the city shall include:

- a) The specialized experience and technical competence of the firm with respect to grant administration and related work;
- b) The past record of performance of the firm with respect to such factors as accessibility to clients, quality of work, and ability to meet schedules;
- c) The firm's proximity to and familiarity with the area in which the project is located;
- d) The capability of carrying out all aspects of grant related activities;
- e) Cost of services;
- f) References from previous clients of related work with the firm within the past five years; (a), (b), and (d) above shall receive priority weighting in the final selection.

This information should be submitted no later than \_\_\_\_\_, 5:00 p.m., City Hall, 111  
(date)

First Street, Anytown, KS 66000. For more information contact City Clerk at 555-555-5555. The City of Anytown, is an Equal Opportunity Employer, and invites the submission of proposals from minority and women-owned firms.

## **EXHIBIT III – PROCUREMENT**

### **BONDING AND INSURANCE REQUIREMENTS**

- A. The government-wide grants management common rule, “Uniform Administrative Requirements for Grants to State and Local Governments,” contains bonding requirements only for circumstances when a grantee contracts for construction or facility improvement (including alteration and renovation) and the bids and contracts exceed \$100,000. The following types of bonds are required in the procurement” section of the common rule:
- A bid guarantee equal to at least five percent of the proposed contract amount, secured through a bid loan or a certified check;
  - A 100 percent “performance bond” on the part of the contractor to secure fulfillment of all the contractor’s obligations under the contract; and
  - A 100 percent “payment bond” on the part of the contractor to assure payment, as required by law, of all persons supplying labor and materials as part of work provided under the contract.
- B. The State of Kansas NSP program, through adoption of the federal policy and amending it to fit the State’s program needs, extends the above bonding requirements to cover all contracts that exceed \$25,000. Allowance is made for local requirements to prevail for contracts between \$25,000 and \$100,000 as long as the bid and the subsequent contract is secured to protect the grantee and the Federal funds. NSP/CDBG also recommends some type of security on all construction contracts under \$25,000, such as a line of credit, cash deposit in bank for term of project, etc.
- C. The Department reserves the right to promulgate and enforce bonding procedures and requirements applicable to any project.
- D. All bonds shall be procured from a surety company registered and licensed to do business in the State of Kansas and countersigned by its Kansas resident agent.
- E. Grantees are advised to review the requirements to ensure contracting occurs in accordance with state law.