

COMMONWEALTH OF PENNSYLVANIA
Department of Conservation and Natural Resources

Bureau of Recreation and Conservation (BRC)
Administrative Policy/Grant Guidelines

SUBJECT: Competitive Bidding/Purchasing Policy

EFFECTIVE DATE: 10/5/09

REVISED: 1/9/14, 1/17/17, 9/22/17, 9/14/18, 12/5/18

BACKGROUND: DCNR Grantees are responsible for following the competitive bidding/purchasing requirements that apply to their organization. These vary based on the type of organization. Grantees not familiar with the applicable bidding/purchasing requirements are strongly advised to consult with their solicitor/attorney.

POLICY:

Competitive Bidding/Purchasing Procedures for Development Projects:

For **Development** projects, in most cases, Grantees will be required to publicly advertise, bid and award construction contracts to construct, as well as, to purchase materials and equipment. The Bureau will require the Grantee to submit proof of compliance with these procedures.

For projects awarded Pennsylvania Recreational Trails funding, the grantee must follow the requirements described in the Pennsylvania Recreational Trails Project Policy.

Subject to analysis of a Grantee's capabilities, the Bureau may permit and approve, on a case-by-case basis, that work for some or all of the project be completed by force account rather than by competitive bidding and executed contracts. If approved by the Bureau, Grantee's work crews and construction equipment may be used and would be eligible as a non-cash match for the project. Donated labor and equipment may also be used and may be eligible non-cash match for the project.

The Department of Labor and Industry annually publishes competitive bid requirements for political subdivisions and other entities where the law requires open and competitive bidding. In September of each year, the base amounts are recalculated and published in the Pennsylvania Bulletin by December of that year. The adjusted base amounts become effective January 1 of the following year. It is the responsibility of the Grantee, in consultation with their Solicitor/Attorney, to follow the established bid requirements.

Grantees shall not evade provisions of advertising for bids by purchasing materials or contracting for services in a piecemeal manner for the purpose of obtaining prices under the established bidding limits, when transactions should, in the exercise of reasonable discretion and prudence, be conducted as one transaction, amounting to values which exceed the established bidding limit.

Note: For Construction and Materials Contracts and purchases the Grantee is expected to accept the lowest qualified advertised quote and or bid.

I. Municipal Grantees:

- a. If the Grantee is a political subdivision or other entity for which open and competitive bidding procedures have been established by law, the Grantee shall comply with those procedures, as applicable to the project being funded.
- b. The Bureau requires the Grantee to submit proof of compliance with said procedures.
- c. If other state or federal funds are being used by the organization as a match for the DCNR project and competitive bidding procedures are to be used, please provide the program specific documentation to the Bureau.
- d. **Separations Act:** In the preparation of specifications for the erection, construction, and alteration of any public building, separate specifications must be prepared for plumbing, heating, ventilating, and electrical work elements. The Grantee must receive separate bids for each work element and award the contract for the same to the lowest responsible bidder for each work element.
- e. **Professional Design Services Contracts:** The Grantee must comply with all applicable Municipal Code and local ordinance requirements related to securing a Professional Service Contract.

II. Non-Profit, For-Profit or any Organization not covered by bidding laws:

- a. Grantees with grant allocations between \$20,000 - \$100,000
 1. Grantees will be required to obtain (3) formal written quotes.
 2. Quotes must be formalized and may be directly solicited, publicly advertised in a newspaper of general publication and/or by utilizing a public electronic construction bidding venue.

Note: For Partnerships Projects, this will only apply to development related work elements with grant allocations of \$20,000 - \$100,000.

- b. Grantees with grant allocations over \$100,000
 1. Grantees will be required to use open and competitive purchasing procedures related to the use of these public funds for any grants, sub-grants, contracts, subcontracts and/or other agreements for construction, reconstruction or alteration work and/or purchase of machinery and equipment.
 2. Bid documents must be formalized and publicly advertised in a newspaper of general publication and/or by utilizing a public electronic construction bidding venue.

Note: For Partnerships Projects, this will only apply to development related work elements with grant allocations over \$100,000.

- c. The Bureau requires the Grantee to submit proof of compliance with said procedures.

- d. If other state or federal funds are being used by the organization as a match for the DCNR project and competitive bidding procedures are to be used, please provide the program specific documentation to the Bureau.
- e. **Separations Act:** In the preparation of specifications for the erection, construction, and alteration of any public building, separate specifications must be prepared for plumbing, heating, ventilating, and electrical work elements. The Grantee must receive separate bids for each work element and award the contract for the same to the lowest responsible bidder for each work element.
- f. **Professional Design Services Contracts:** The Grantee must comply with all applicable Organization requirements related to securing a Professional Service Contract. For projects awarded Pennsylvania Recreational Trails funding, the grantee must follow the requirements described in the Pennsylvania Recreational Trails Project Policy.

III. Bonding Requirements:

(Applies to all DCNR funded projects that are placed out for Advertised Bidding.)

- a. **Bid Bond** (or certified check, bank cashier's check or treasurer's check) is to be provided with the bid proposal to ensure the bidders financial responsibility for the bid.
- b. **Performance Bond and Labor and Material Payment Bonds** - The Public Works Contractors' Bond Law of 1967, as amended, 8 P.S. §§ 191-202, requires that all construction contracts in excess of \$10,000 be accompanied by a Performance Bond and a Labor and Material Payment Bond, unless current municipal codes are more restrictive. Each bond must be in the amount of 100% of the contract award price. These bonds must be secured from an agency or firm approved by the Commonwealth's Department of Insurance to do business in Pennsylvania. These bonds may be substituted with other acceptable forms of security by Municipal Grantees (Act 171 of 1991, 8 P.S. 193, 1967, P.L. 869 No. 385).
- c. **Maintenance Bond** is also required to protect Municipal Grantee/Non-Profit from faulty or defective work by the contractor. This bond should cover a period of one year following the completion of the project and should be in an amount of at least 10% of contract price.

IV. Prevailing Wage Rates:

(Applies to all DCNR funded projects purchasing Labor Services.)

- a. **Pennsylvania Prevailing Wage Act:** Construction projects (construction, reconstruction, demolition, alteration and/or repair work *other than maintenance work*) – where the total estimated cost of all material purchases and contracted labor is in excess of \$25,000 – require PA prevailing wages under the PA Prevailing Wage Act. A municipality has the responsibility of obtaining PA prevailing wage rates from the PA Department of Labor & Industry for a project. The PA prevailing wage rates must be included in the contracts, notice for bids and advertisements.

The following are not subject to PA prevailing wage rates:

- In-house labor
- Volunteer labor
- Material suppliers and/or their employees who do not perform services at the job site

- b. Davis-Bacon Act:** If a Grantee will be using Federal Funds as a part of the local match, and the contract(s) or subcontract(s) exceed two thousand dollars (\$2,000), compliance with Davis-Bacon Federal Wage Rates may be required. In all cases, the appropriate wage rates must be incorporated into the specifications and the bidding documents prior to advertising.

V. Cooperative Purchasing Programs:

The Pennsylvania Procurement Code and other cooperative purchasing statutes allow political subdivisions, public authorities, nonprofit organizations and other entities that expend public funds to participate in Cooperative Purchasing Programs to purchase equipment, materials and ancillary services under competitively solicited contracts. Cooperatives typically charge a small fee or no fee to join and may operate locally, statewide, or nationwide.

Grantees may purchase recreational equipment, materials and ancillary services from Cooperative Purchasing Programs including, but not limited to, COSTARS, U.S. Communities Program, and Keystone Purchasing Network. DCNR bond requirements and the provisions of the PA Prevailing Wage Act and/or the Davis-Bacon Act are applicable to all contracts.

Grantees should consult with their solicitor/attorney for further guidance on procurement requirements and eligibility. Purchasing plans must be reviewed and approved by the Grantee's solicitor/attorney and the Bureau project manager.

VI. Other Requirements:

Some grant funds awarded by the Bureau have additional bidding requirements beyond what is outlined in this policy. Bureau project managers will assist with incorporating any additional requirements.

Competitive RFP Procedures for Planning Projects:

For **planning** projects, project consultants must be selected using a competitive Request for Proposals (RFP) process. The RFP process, while competitive, is not a formal process required by state law, such as the law governing construction work or purchase of materials and equipment. As a more informal process, it can be molded by the Grantee to best meet the project needs.

The RFP lets consulting firms know the availability of a project. It provides a detailed Project Scope of Work and related requirements so that all firms are competing on the same basis and with the same information. Proposals from more than one consulting firm provide an opportunity to compare different approaches to the work, various cost proposals and the level of expertise of more than one firm. The RFP provides structure to the consultant selection process to ensure that the project work is well understood, work requirements and contracting details are not overlooked and the most cost-effective professional services contract is achieved.

The Bureau requires that the Grantee prepare the RFP and that the RFP be approved by the Bureau *before* the Grantee seeks a consultant. The Bureau requires that copies of the approved RFP be sent to at least five (5) consulting firms, if possible. The Bureau may be able to assist in finding potential firms; however, the Bureau does not endorse any consulting firms. The Grantee is encouraged to contact other previously funded agencies to solicit contact information for qualified consulting firms.

The firm selected through an RFP process does not have to be the one submitting the lowest cost proposal. The selected proposal must be cost-effective and responsive to the community and project needs, however.

Once the Grantee has made a preliminary selection from the consultants who responded to the RFP, the following items must be submitted to the Bureau for review and approval:

- list of proposals received and the cost of each proposal (bid tabulation sheet)
- the name of the firm the Grantee would like to hire
- the rationale for selection and copy of the selected firm's proposal
- copy of the selected proposal and draft of the consultant contract

Bureau staff will review this material and respond in writing. **The Grantee may not proceed without the Bureau's written authorization to execute the consultant contract.**

Upon written request, the Bureau may, at the Bureau's sole discretion, waive the required RFP process. Waivers may be considered for requests that meet the following conditions:

1. The consulting firm must meet the DCNR Consultant Qualifications for planning grant projects. Specifically, at least one member of the consulting team must have documented, prior experience conducting studies of the project type being undertaken.
2. The consulting firm must have documented prior experience with completion of other related recreation and conservation planning projects within the study area.
3. The consulting firm must propose a project cost that is realistic and competitive for the project type being undertaken.

This policy remains in effect until revised or rescinded.