

COMMISSIONERS OF WAYNE COUNTY

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Damascus Township, PA

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Chief Clerk

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Solicitor

Procurement Policies and Procedures

Community Development Block Grant

Wayne County

COMMISSIONERS OF WAYNE COUNTY

Adopted by Wayne County Commissioners May 19, 2022



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Policy Statement

The County, in administration and implementation of the federal Community Development Block Grant (CDBG) program, shall strictly adhere to the following procurement policies and procedures. Wayne County shall comply with the Pennsylvania County Code, 2 CFR Part 200, 24 CFR Part 85, and all other applicable federal, state, and local laws, regulations, and Executive Orders.

The purpose of these policies and procedures are to:

- simplify and clarify the procurement process;
- foster open competition;
- promote economic opportunity for M/WBE and Section 3 businesses;
- ensure fair and equitable treatment of all bidders and offerors;
- promote quality and integrity in the procurement process and administrative systems;
and
- ensure that materials and services are obtained in a cost-effective manner.

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Applicability

These policies and procedures shall be applicable to all activities funded by the Community Development Block Grant (CDBG). All policies and procedures shall also apply to subcontractors that receive CDBG funding.

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Standards of Conduct/Conflict of Interest

No employee, agent, consultant, officer, or elected official or appointed official of Wayne County, or of any designated public agencies, or of subrecipients that are receiving CDBG funds who exercise or have exercised any functions or responsibilities with respect to CDBG activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

The officers, employees, and agents of Wayne County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Violations of such standards by officers, employees, or agents of Wayne County will result in disciplinary actions.

Firms awarded non-bid contracts are required to file DSEB-504 to report certain individual political contributions by February 15th of each year to comply with Section 1641 of the Pennsylvania Election Code. Firms must file when:

- Any officer, director, associate, partner, limited partner or individual owner or members of their immediate family whose political contribution exceeded one thousand dollars (\$1,000) by any individual during the preceding year; or
- Any employee of the supplier or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

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Procurement Methods

Each procurement will be reviewed to avoid the purchase of unnecessary or duplicative items. When possible, procurements will be consolidated or broken out to obtain a more economical purchase. When needed, the County will analyze lease versus purchase alternatives and any other appropriate analysis to determine the approach that is most economical. When feasible, engineering clauses will be used in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

A cost or price analysis will be performed for every procurement action including contract modifications. Independent estimates will be made before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of the estimated cost, when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price on a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. The County will negotiate profit as a separate element of the price for each contract when there is no price competition and in all cases where cost analysis is performed. The cost plus a percentage of cost and percentage of contracting shall not be used.

The procurement method to be used shall be based upon 2 CFR Part 200.320. The threshold for sealed bids and competitive proposals shall be adjusted in January of each year according to the Pennsylvania Department of Labor and Industry Guidelines.

If CDBG funds are used in whole or at least 50% in part for a subgrant, contract, subcontract, or other agreement for construction, reconstruction, demolition, alteration, repair, acquisition of machinery or equipment, and/or engagement of the professional services of a consultant, then \$10,000 shall be used in lieu of the micropurchase threshold.

Micro Purchases

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Micro purchases are purchases of services or supplies with an aggregate cost of \$11,800 or less. Bids will not be solicited for micro purchases if the cost is deemed to be reasonable. Micro purchases will be distributed among suppliers to the extent that this is practicable.

Small Purchases

Small purchases are those that are more than \$11,800 but less than \$21,900. For small purchases, written arms' length quotes will be obtained from at least three sources. Documentation of these quotes shall be maintained in a file. The award will be made to the lowest acceptable quote.

Sealed Bids

Sealed bids shall be used for all construction projects of \$21,900 or more. Bids will be publicly solicited and a firm fixed price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. If the lowest bid is not accepted because the bidder is deemed to be not responsible or the bid is nonresponsive, the decision-making process will be documented in a memorandum and retained in the procurement file.

When preparing for the erection, construction, and alteration of any public building, separate bids will be prepared for the plumbing, heating, ventilating, and electrical work if the entire cost of the work exceeds \$21,900. When separate bids are required, the County will receive separate bids on each type of work and award the contract to the lowest responsible bidder for each type.

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

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

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Wayne County will follow these procedures when using sealed bids:

An Invitation for Bids will be developed to define the items or services so that the bidders can properly respond

Bids will be solicited from an adequate number of known suppliers including M/WBE and Section 3 firms

Bids will be publicly advertised at least 10 days before the scheduled bid opening date

Advertisements will be placed at least two times, at intervals of not less than three days for daily newspapers, or where weekly newspapers are used, then the notice will be published once a week for two successive weeks.

Each bid will be date and time stamped when it is received

Bids will be opened in public in front of a witness at the time and place prescribed in the Invitation for Bids

All bids will be read aloud

A tabulation of bidders will be created

The award of contracts must be made by public announcement at the meeting at which bids are received or at a subsequent meeting, the time and place of which must be publicly announced when bids are received

A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder

Unsuccessful bidders will be notified in writing

Advertisements shall include the following information:

Name and address of the municipality requesting the services or material

Name and address of the person authorized to receive the bids

The time, date, and place set for opening bids

A brief description of the desired work, its scope and location, and the completion date

Restrictions relative to submission, change, or withdrawal of bids

The location and time where plans and specifications may be received by the contractors, provisions for a deposit on the plans, and recovery of the deposit when the plans are returned

Name and address of the engineer, architect, or other professional consultant responsible for managing the project on behalf of the municipality

Deadline for receipt of bids if it will be before the time and date of bid opening

Confirmation as to whether the purchase price can include an allowance for trade-ins of used equipment or vehicles where applicable

The time period within which bids will be considered valid. If, for some reason, the municipality has not awarded the bid within that time, new bids must be submitted

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Bid documents shall include:

A detailed description of the scope of work

All applicable laws, terms, and conditions

A clause stating that the County may examine qualifications of the bidder and request additional information and data from the bidder

A clause indicating that any questions or interpretations of the plans, specifications, or other documents must be provided to the County in writing prior to a specified date and that written responses to the questions will be provided to all bidders

A statement that the bidder is presumed to have investigated and examined the plans and all other contract documents, as well as the site, if applicable, and it is assumed the bid is made with the bidder's full knowledge and understanding of the conditions of the work

A statement that the lowest qualified bidder will be awarded the contract

A statement that the County reserves the right to reject all bids in the advertisement or bidders' instructions

A description of methods and restrictions for making changes to bidding documents (material changes in specifications will be advertised in order to provide an opportunity to prospective bidders who may have chosen not to bid under the original specifications)

Bonding requirements

Instructions to label submitted bids

Instructions to identify subcontractors and a statement prohibiting the change of subcontractors without approval of the County

Labor standards provisions (HUD 4010)

Non-collusion affidavit

MBE/WBE/Section 3 Contract Solicitation and Commitment Statement (DCED-CCD-286 and DCED-CCD-226)

Illegal Alien Prohibition

Public Works Employment Verification Form

Wage Decision

All invitations to bid will include the following information:

"The bidders/offerors must submit documentary evidence of minority and women business enterprises who have been contacted and to whom commitments have been made.

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Documentation of such solicitations and commitments shall be submitted concurrently with the bid."

Contracts shall be subject to:

- Public Works Employment Verification Act
- Pennsylvania Steel Procurement Act, unless exempt
- Pennsylvania Separations Act of 1913

Bidders must meet the following minimum bonding requirements:

- A bid guarantee from each bidder equivalent to 5% of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for 100% of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- A payment bond on the part of the contractor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Bids may be withdrawn or corrected prior to the bid opening date and time. Changes may not be made to bids after the bid opening. Bids may be withdrawn after the bid opening date in accordance with the Bid Withdrawal Act.

Any or all bids may be rejected if there is a sound documented reason as described in the Responsibilities of Bidders and Offerors of this document. Bids that do not follow instructions will be automatically disqualified and documentation of exclusion will be maintained in the procurement file.

If only one bid is received, it may be accepted if it is deemed to be reasonable.

Competitive Proposals

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Competitive proposals shall be used for all consulting and professional services of \$21,900 or more. They shall be for either a fixed price or cost-reimbursement type contract. A Request for Proposals (RFP) shall be issued for defined projects and a Request for Qualifications (RFQ) shall be issued for non-project specific solicitation of architectural and engineering firms.

Wayne County will follow these procedures when using competitive proposals:

- Requests for Proposals and Requests for Qualifications will be publicized in at least one newspaper and on the County's website

- Requests for Proposals and Requests for Qualifications will include all evaluation factors and their relative importance

- Proposals and qualifications will be solicited from an adequate number of qualified sources, including but not limited to M/BE and Section 3 firms

- All responses will be considered to the maximum extent practicable

- The method for conducting technical evaluations of the proposals and qualifications received will be documented in writing and maintained in the file

- Proposals will be date and time stamped when they are received

- A register of proposals or qualifications received will be created

- Interviews may be conducted with offerors if specified in the RFP/RFQ

- Contracts will be awarded to the responsible firm whose proposal is most advantageous to the program in terms of qualifications, experience, price, ability to perform the work within the timeline, and other factors

For architectural and engineering professional services, the most qualified competitor may be selected regardless of price, subject to negotiation of fair and reasonable compensation.

Proposals may be withdrawn or corrected prior to the due date and time. Changes may not be made to proposals after the due date and time.

Any or all proposals or qualifications may be rejected if there is a sound documented reason as described in the Responsibilities of Bidders and Offerors of this document or if the proposal is nonresponsive (incomplete).

If only one proposal is received, it may be accepted if it is deemed to be reasonable.

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Non-Competitive Proposals

Non-competitive proposals may be obtained only in the following circumstances:

- The item is only available through a single source
- There is an emergency or immediate need
- Competition is deemed inadequate after solicitation of a number of sources.

The procurement file will include a memorandum describing the reason why a non-competitive proposal was used.

If a non-competitive proposal is used, the Pennsylvania Department of Community and Economic Development must review documentation prior to awarding a contract.

Cooperative Purchasing

Whenever it is feasible and beneficial, Wayne County will procure supplies and purchases through COSTARS or other cooperative purchasing agreements.

M/WBE Requirements

Wayne County shall follow its Minority/Women Business Enterprise Action Plan.

Wayne County shall make a good faith effort to reach out to M/WBEs by:

Identifying qualifying firms using resources available from DGS and PHFA

When feasible, dividing requirements into smaller tasks

Requiring primes to take affirmative steps

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Section 3 Requirements

Wayne County has adopted a Section 3 Plan and follows this plan in its procurement activities.

A Section 3 business is one that is:

- 51% or more owned by Section 3 residents;
- 30% of FTE are Section 3 residents or were within 3 years of the date of first hire; or
- 25% of all subcontracts are to Section 3 businesses.

Section 3 businesses will be identified using the HUD Section 3 Business Registry.

A written notice of contracting opportunities will be sent to all Section 3 businesses in Wayne County.

Wayne County shall meet the following Section 3 requirements:

- Twenty-five percent (25%) or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers
- Five percent (5%) or more of the total number of labor hours worked on projects funded by Section 3 are Targeted Section 3 workers

If the County is unable to meet these requirements, a memorandum shall describe the steps that were taken to identify and recruit Section 3 businesses and workers.

The County will maintain records related to statutory, regulatory, and contractual compliance with Section 3 for applicable projects.

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Documentation

Wayne County will maintain records sufficient to detail the history of procurement. The County will also maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Procurement Files

The following documentation will be maintained in all procurement files:

- Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price

The following documentation will be maintained in small purchases procurement files:

- Copies of three or more written quotes

The following documentation will be maintained in sealed bid and competitive proposal procurement files:

- List of bidders or offerors

- Copies of bids, proposals, and qualifications received

- M/WBE documentation

 - A list of M/WBE firms solicited

 - Copies of correspondence with contractors related to M/WBE

 - Documentation of M/WBE outreach

 - MBE/WBE Contract Solicitation and Commitment Statement (DCED-CCD-286)

 - Memorandum describing steps to solicit M/WBE

- Section 3 documentation

 - Contract Solicitation and Commitment Statement (DCED-CCD-226)

 - Workforce Needs Table

 - Documentation of contractor compliance

 - Memorandum describing the steps that taken to identify and recruit Section 3 businesses

- Date and time stamped verification that the selected contractor is not suspended or debarred

- Dated copies of advertisements or other public notifications

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Fully executed contracts

A form or forms that captures: 1) description of the contract explaining if it is an annual or a one-time project; 2) the dollar amount of the contract; 3) start and stop dates; 4) renewal dates for annual contracts; 5) evaluation of contractor performance; 6) other municipalities or governmental agencies involved; 7) identification of related current or completed contracts; and 8) history of billings and payments on the contract updated monthly.

Copies of written correspondence with bidders or offerors

If a bidder or offeror is disqualified due to an incomplete application, a memorandum documenting this determination

The following documentation will be maintained in sealed bid procurement files:

A copy of all bid documents

If the lowest bid is not accepted because the bidder is deemed to be not responsible or the bid is nonresponsive, a memorandum documenting the decision-making process

The following documentation will be maintained in competitive proposal procurement files:

A copy of the RFP or RFQ

A description of the method for conducting technical evaluations of the proposals received will be documented in writing and maintained in the file

Scoring or evaluation results

The following documentation will be maintained in non-competitive proposal procurement files:

A memorandum describing the circumstance that resulted in the non-competitive proposal

Documentation of approval from DCED

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Responsibilities of Bidders and Offerors

Wayne County awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

A responsible bidder or offeror:

- Has the necessary expertise and resources, or ability to obtain them, needed to capably meet all contractual obligations

- Has a satisfactory record of performance and record of integrity

- Is legally qualified to contract with the County

- Provides complete information in response to an IFQ or RFP

- Has a record of compliance

- Is not currently suspended or debarred by the Commonwealth of Pennsylvania or the United States Government

Wayne County will not award a contract to an entity that is excluded or debarred. Each bidder or offeror will be checked in state and federal databases to ensure that they have not been excluded or debarred prior to awarding any contract.

If a bidder or offeror is deemed to be not responsible, a written memorandum explaining the basis of this finding will be placed in the procurement file. A copy of this determination will be sent to the bidder or offeror.

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Public Access to Procurement Information

All solicitations and contract awards shall be posted on the County's website.

Procurement information shall be a public record to the extent provided in the Pennsylvania Right to Know Law, 65 P.S. §67.101 et seq., and shall be available to the public as provided in such statute. Documents that contain trade secrets or confidential proprietary information are exempt from public disclosure. The bidder or offeror must provide, with the bid, quote, proposal, or contract, a written statement noting that the document contains a trade secret or confidential proprietary information. The Solicitor will be consulted whenever a request is made for materials that are labeled as containing trade secrets or confidential proprietary information.

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Contracts

All contracts with subgrantees will include the following:

Statement of work

Procedure for change orders and extra cost claims

Payment schedule and interest penalties

Holdback of payments (for public works contracts that exceed \$50,000, retainage cannot exceed 10 percent of the amount due the contractor until 50 percent of the contract is completed)

Authority of the municipality's consultant, if applicable

Subcontracts

Contractor liability

Final cleanup, if applicable

Required licenses, permits, and local regulations, if applicable

Access by the grantee, the subgrantee, the PA Department of Community and Economic Development, the US Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions

Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed

Workers' compensation requirements

Non-collusion affidavit

Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts more than the simplified acquisition threshold)

Termination for cause and for convenience by the grantee or sub grantee including the manner by which it will be effected and the basis for settlement (all contracts in excess of \$10,000)

Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (all construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub grantees)

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M/WBE and Section 3 Requirements

Compliance with the Copeland "Anti-Kickback" Act (18.874) as supplemented in Department of Labor regulations (29 CFR part 3) (all contracts and subgrants for construction or repair)

Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR part 5) (construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5) (construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)

Notice of awarding agency requirements and regulations pertaining to reporting

Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract

Awarding agency requirements and regulations pertaining to copyrights and rights in data

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) (contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163)

Contracts will be reviewed by the County Solicitor prior to execution.

APPROVED this _____ day of _____, 2022.

COMMISSIONERS OF WAYNE COUNTY

Attest:

Signatures:

Andrew Seder, Chief Clerk Date

Brian W. Smith, Chairman Date

Joseph W. Adams, Commissioner Date

Jocelyn Cramer, Commissioner Date