**CHAPTER V. PROCUREMENT**

**Introduction**

This section contains instruction and forms used for procurement procedures that will aid Grantees (cities, counties, owners, or sub-recipients such as special districts and nonprofits) in the solicitation and contracting of professional services (i.e., grant administrators, engineers, architects, surveyors, landscape architects, and construction managers); construction services; and supply and delivery services for Idaho Community Development Block Grant (CDBG) funded projects.

The chapter is broken into four sections:

 Section A – Grant Administrator Procurement Process

Section B – Design Professional Procurement Process

 Section C – Construction Procurement Process

 Section D – Design, Supply, Deliver and Construct Procurement Process

**Applicable Laws and Regulations**

2 CFR Part 200 – uniform administrative requirements

24 CFR Part 570 – community development block grant

Executive Orders 11246 & 11478 – equal employment opportunity

Idaho Code Title 67, Chapter 28 – purchasing by political subdivisions

Idaho Code Title 54, Chapter 19 – public works contractors

Idaho Code Title 67, Chapter 2320 – design professional qualification-based selection

HUD CPD Notice 96-05

Grantees are responsible for the settlement and satisfaction of all contractual and administrative issues of procurement entered into in connection with CDBG programs. These responsibilities include ensuring all contracts funded in whole or in part with CDBG funds are awarded in accordance with federal and state law. Federal regulations stipulate that each state may adopt their own procurement regulations, which is called the Common Rule. Therefore, CDBG procurement regulations are a combination of federal and state laws.

Definition: “Grantee” can be synonymous with city, county, owner and/or sub-recipient.

**Five Methods of Procurement**

A**.** Micro Procedure

B. Small Purchase Procedures

C. Competitive Sealed Bids - formal advertising

D. Competitive Negotiation/Proposals –Typically involves the procurement of design professionals (architect and engineering)

E. \*Noncompetitive Negotiation (sole source) is procurement through solicitation of a proposal from one (1) source. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

1. After solicitation from a number of sources, competition is determined inadequate;

2. The items or services required are available from only one (1) source;

3. If the Idaho Department of Commerce (IDC) authorizes the noncompetitive method; or

4. Public emergency for the requirement will not permit a delay resulting from competitive solicitation.

\*CDBG program rarely uses or can justify the use of sole source procurement with exception to some emergency situations. Contact your IDC Specialist before pursuing sole source procurement.

**CDBG SPECIAL NOTES**

**Construction and Procurement Document Forms**

As long as the required CDBG clauses, provisions, and forms are included in the bidding document, IDC is flexible with the Owner using the Engineers Joint Contract Document Committee (EJCDC) forms or America Institute of Architects (AIA) forms or the Owner’s own construction document forms. IDC, however, highly recommends that the chosen forms in the bidding document are reviewed by the Owner’s legal counsel. The EJCDC and AIA provisions can be amended.

The Owner may choose to use their own supply and deliver document forms which would also need to include the CDBG supply and deliver supplemental conditions. If the Owner does not have forms available, the EJCDC has forms developed for supply and deliver procurement contracts which could be utilized. Forms include instruction to bidders, agreement form, performance bond, general conditions, and supplemental conditions.

**Prior Procurement**

If the procurement of a grant administrator, design professional, or contractor occurred prior to award of CDBG funding and the Owner plans to use CDBG funds to pay for any of these services, the procurement process must have met CDBG procurement requirements, occurred within the last three years, and be documented before CDBG funds can be used to pay for those services. There is the possibility that if a pre-qualified list (such as a Request for Qualifications) was established and the process of developing this list met CDBG standards, the grant funds could be expended on those services. If this is the case, contact your IDC Specialist before application submission.

The Owner may accept proposals or bids from companies, non-profits or persons that have provided guidance and technical assistance in establishing the procurement process as long as the process is open and competitive. Also, the procurement requirements or evaluation criterion must not be unreasonably restrictive.

**Force Account Labor**

If the Owner chooses to use force account labor (their own staff) to administer, design, engineer, inspect, or construct a CDBG project, the Owner must maintain detailed timesheets of hours worked on the project, rate of pay, and signed time sheets. If force account labor is used for construction, prevailing wage rates are not applicable. Any force account labor used will need to meet required certification or licensing.

**Solicitation Summaries**

For construction or supply and deliver bidding opportunities, IDC staff will submit a list of the approved projects to the Idaho Procurement Technical Assistance Center (PTAC) who provides project or bid notices to PTAC’s clients (Women-Owned, Disabled Veteran-Owned, Section 8, HUB Zone and Minority Owned Businesses) and ITD’s designated Disadvantaged Business Enterprises (DBEs) program. For Grant Administration and Design Professional Request for Proposals (RFP) opportunities, it is the Owner’s responsibility to submit the Idaho Procurement Assistance Solicitation Notice to IDC. (Exhibit C)

**Pre-Fabricated or Modular Buildings**

If a pre-fab or modular building is part of the project, the Owner will need to ensure the building meets all required building codes including electrical, plumbing, structural, and modular. Contact the local building department about code requirements.

**Construction Manager Representative** **(Idaho Code 54-4511)**

The Owner may wish to contract with a licensed Construction Manager (individual or firm) to provide the coordination of a construction project. Coordination activities include scheduling, estimating and approval, coordinate, manage or direct phases of a project for the construction, demolition, alteration, repair or reconstruction of any public work.

**Construction Manager / General Contractor** **(Idaho Code 54-1902)**

The Owner may wish to contract with a Construction Manager General Contractor (individual or firm) to act as both the construction manager and general contractor provided the CMGC has a valid public works license.

**Design-Build (Idaho Code 67-2309)**

The Owner contracts with a single entity for the complete design and construction of a project. The design-build provides complete design service and the construction work under a single contract with the Owner.

**Definitions:**

Responsible Bidder

A bidder who has adequate financial resources to perform the contract, ability to comply with performance schedule, satisfactory performance record, necessary construction equipment and is eligible to receive award under applicable laws.

Responsive Bid

A bid which conforms exactly to the requirements in the advertisement for bid.

**SECTION A**

**CDBG Grant Administration**

CDBG funds can be used to pay for the services of a certified grant administrator and licensed design professional. The Grantee may choose to contract out for professional services or perform these services with their own staff (force account or in-kind).

If the Grantee determines to contract out for grant administration or design professional services in order for these services to be eligible for CDBG funding, a Grantee must follow a combination of federal and state procurement laws. This process is known as Qualification Based Selection (QBS). QBS is the selection of professional services based on qualifications as established and valued in the RFP.

Exhibits in this section include:

* Request for Proposals for Administrator Services, Sample Format
* Request for Proposals for Administrator Services, Published Advertisement
* Evaluation Rating Sheet (for recording proposal scores)
* Grant Administration Contract and Scope of Work (Attachment A), Sample Format. These forms are designed to allow Grantees to fill in the blanks and are very helpful when utilized during the procurement process for professional services.

**GRANT ADMINISTRATOR PROCUREMENT**

Due to the complexities of the federal and state rules and regulations that accompany a CDBG project, IDC requires that an IDC certified grant administrator provide administrative services to implement the grant. An overview of grant administration services may include but is not limited to:

* Understand community’s need
* Define a project to meet the need
* Determine project eligibility
* Efficiently integrate CDBG with other funding sources (if applicable)
* Environmental review
* Prepare CDBG application
* Assist in presentations
* Ensure performance, procurement, property acquisition, relocation, environmental review, bidding, labor standards, financial management, citizen participation, civil rights, fair housing, and 504 activities comply with applicable federal and state regulations during course of the project
* Resolve compliance issues
* Maintain files
* Submit reports
* Prepare Request for Funds

**Micro Purchase Procedure (estimated cost $25,000 or less)**

The Grantee may procure grant administration services from any IDC certified grant administrator believed to provide the best value. The Grantee’s procurement procedures should be determined by their governing board.

At a minimum the following requirements will need to be met:

* Documentation from the Grantee of the procedures used to hire the Grant Administrator.
* Execute Grant Administrator Contract (Exhibit D) with the Grant Administrator.
* Send signed contract to IDC. No payment will be made for grant administrator services until signed contract is received

**Small Purchase Procedure (estimated cost between $25,001 and $100,000)**

The following process should be used:

A. Prepare an RFP (Exhibit A)

1. The RFP shall indicate that proposals will be evaluated based on the following (QBS) criteria format and the points associated with each criteria. Each criterion has a point range from 10 to 30. **It is up to the Grantee to determine the value of each criterion** **(between 10 to 30 points) for a total 100 points**. The following criteria should be used for evaluating the written proposals**:**

Capability to Perform Project 10-30 pts.

Relevant Project Experience 10-30 pts.

Qualifications of Project Team 10-30 pts.

Project Approach and Schedule 10-30 pts.

 Total Proposal Points Possible = 100 pts.

Selection Committee Interview (Optional) 10-30 pts.

Total Points Possible = 110-130 pts.

Note: If a Grantee expects to receive a high number of proposals, the Grantee has the option of interviewing only the top scoring proposals based on the written proposals. However, the intent of potentially implementing of this option must be identified in the RFP.

B. Solicitation of an RFP

1. Mail or email your RFP to three (3) or more grant administrators and/or publicly advertise the RFP (Exhibit B). At least seven days shall be allowed to submit proposals. Proposals must be in writing.

2. Identify all proposals received and/or reasons proposals were not received. This information must be documented in the project file.

3. There are different RFP solicitation scenarios that can be used on CDBG projects. Grantees can seek administrative services for either specified CDBG funded projects, services for a period of time (limited to three (3) years) or establish a list of certified grant administrators.

**Note*:* All grant administrators must be certified by IDC prior to contract award.**

C. Rank the Proposals

1. At least three (3) people must be on the selection committee. Individual Evaluation Rating sheets (Exhibit C) must be completed and signed by each selection committee member. No member of the selection committee can have an affiliation with a bidder submitting a proposal.

2. Complete the Summary Evaluation Rating sheet (Exhibit C) to determine the highest scoring firm, which is a combination of written proposal and interview points (if applicable), as averaged by the committee.

D. Negotiate and Execute Contract

1. Contact highest ranked firm and negotiate an agreement, a detailed scope of work, fee, and schedule. Negotiation does not need to be tense and unpleasant; it can be positive if approached with an attitude of strength, cooperation and informed compromise. If an agreement cannot be reached with the top-ranked firm, the Grantee can move on to negotiate with the second-ranked firm, and so on.

2. Before execution of the contract the Grantee must provide documentation of the solicitation, copies of the evaluation forms, and a draft of the contract to the IDC for review and approval.

3. Execute Grant Administrator Contract (Exhibit D) with the Grant Administrator. Send signed contract to IDC. No payment will be made for grant administrative services until signed grant administration contract is received.

**Grant Administrator – Competitive Negotiation/Proposals (estimated more than $100,001)**

The competitive negotiation method of procurement must be utilized if the amount of grant administration work exceeds $100,000 (federal and/or local funds). In order for these services to be CDBG eligible, the Grantee must follow the design professional’s procurement format for competitive selection.

**EXHIBITS**

**FOR**

**SECTION A**

**CDBG Grant Administration**

 **Exhibit Name Page No.**

 Exhibit A: Request for Proposals for Administrator Services, Sample Format 11

 Exhibit B: Request for Proposals for Administrator Services,

 Published Advertisement 15

 Exhibit C: Evaluation Rating Sheet 16

 Exhibit D: Grant Administrator Contract and Scope of Work, Sample Format 17

**EXHIBIT A**

(Sample)

**Request for Proposals for**

**Grant Administration Services**

The City/County/Subrecipient of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is requesting proposals for services to assist the city/county/subrecipient in project planning and development; grant writing; and obtaining and managing Idaho Community Development Block Grant (CDBG) funds for the completion of the (project name) project.

Reimbursement for grant administration activities will be contingent on the city/county/subrecipient receiving CDBG funds. The agreement will be on a fixed price basis with payment terms to be negotiated with the selected offeror.

Services to be provided include:

1. Pre-Development stage to include: (**services not eligible for CDBG funding)**

Project planning and development

1. Meet with local governments and non-profits to discuss financing options to address identified needs.
2. Explain various funding programs, eligibility, application process, funding requirements, timelines, etc.
3. Conduct scoping with funding agencies to determine funding availability, verify eligibility, and probability. May include meeting with funding agency representatives.
4. Working with stakeholders define “the project”, for which funding will be applied for.
5. Review census data relative to project beneficiaries.
6. Assess project impacts on the community – environmental, socio-economic, and affordability / costs.
7. Procurement tutoring. Explain to community the RFP requirements for hiring consultants and bidding requirements for hiring contractors. Assist in setting up the procurement process.
8. Bond financing assessment and advancement. Assess with community the need, desire, and probability of pursuing debt financing (passing a bond). Educating and communicating to the general public bond financing including household cost. Presenting at public meetings.

Conducting an income survey, if necessary

1. Verify with funding agencies if survey is necessary.
2. Set-up survey - includes determining methodology, developing questionnaire, determining sample size, establishing random process, verify process with funding agencies, conduct survey, analyze results, and create survey report.
3. Coordinate surveying methodology with other funding agencies.
4. Document and explain survey results to local government and funding agency officials.

Assisting the applicant in establishing their RD Apply account and walking them through the application and submittal process.

Preparing and writing CDBG application, including the public hearing.

2. Grant Administration to include: (**services eligible for CDBG funding)**

1. Project Set-Up – file set-up, facilitating financial management procedures including cost allocation plan, meetings with grantee and stakeholders, submission of pre-contract documents, responding to inquiries, and explaining CDBG requirements to the Grantee and/or sub-recipient.
2. Environmental Review – Conducting an environmental review that complies with 24 CFR Part 58. Duties include, but are not limited to, assessing project site, touring the site, gathering and verifying documentation, determining clearance level, preparing an environmental review record, and collecting any technical environmental studies from the design professional. Publishing and posting public notices. Gathering and tracking comments. Debriefing (City, County or Subrecipient) on the review. Establishing mitigation measures. Securing environmental concurrence with the Idaho Department of Commerce (IDC).
3. Acquisition and Relocation – Ensure (City, County or Subrecipient) complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act for any property, permanent easements or long-term leases acquired for the CDBG project. Touring of the project site, determining acquisition activity, ensuring grantee meets either the voluntary, basic, or donation requirements as per the Uniform Act. Meeting with property owners. Submission of documentation to IDC.
4. Labor Monitoring – Ensuring construction contractors are meeting the requirements of the Davis Bacon Act, Copeland Act, CWHSSA and Fair Labor Standards Act. Duties include, but are not limited to, educating contractors about the labor requirements, providing labor documents and forms to contractors and their sub-contractors, identifying appropriate wage determination, requesting additional wage classifications, reviewing and tracking payrolls, conducting employee interviews on-site or mail, traveling to project site, observing workers, comparing payroll reports with interview information, documenting payroll reviews, identifying and investigating errors with contractor, reporting and facilitating the correction of errors or problems to IDC, and completion of required labor reports.
5. Project Monitoring (during procurement and construction) – Assist (City, County or Subrecipient) in setting up the procurement and then the selection of a design professional and/or contractors in accordance with CDBG requirements. Participating in pre-bid, pre-construction and construction progress meetings. Review of bidding documents, construction progress monitoring, reporting, and construction close-out. Observing construction progress. Monitoring design professional procurement process.
6. Financial management duties which includes coordinating contractor and design professional pay applications, preparation of CDBG request for funds, submission of request to IDC and ensuring proper disbursement of CDBG expenditures.
7. Civil Rights – Equal Access – Completing CDBG civil rights activities and documents. Duties include explaining and educating contractors on compliance with Section 3 requirements and hiring disadvantaged business enterprises. Submission of RFP to Idaho PTAC. Ensuring accurate completion of Section 3 Reports and the Contractor / Sub-contractor Activity Report. Assisting the (City or County) in conducting a Limited English Proficiency (LEP) four-factor analysis. Promoting disadvantaged business enterprises and fair bidding practices. Ensure public display of Equal Employment Opportunity (EEO) posters.
8. Fair Housing Actions – Helping to ensure the Grantee is taking steps to affirmatively further fair housing. Duties include ensuring the Grantee understands and adopts the fair housing resolution, proclaims April as fair housing month, and displays fair housing information. Assist and guide the Grantee in completing a fair housing assessment including identifying contributing factors and actions to mitigate the contributing factors.
9. 504 / ADA Actions – Helping the Grantee to meet CDBG required Section 504 and ADA requirements. Duties include to help develop (or update) an ADA transition plan. Assist the Grantee in review and completion of the effective communication checklist. Ensure the Grantee has in-place a 504 coordinator, non-discrimination policy and ADA grievance procedure. Ensure the Grantee understands and publishes the – Notice under the ADA Act. If necessary, assist the Grantee in conducting (or updating) a self-evaluation of its facilities, services, and programs.
10. Project Close-Out – Documentation that the (City, County or Subrecipient) has met their CDBG national objective and contractual performance requirements, including substantial completion. Completing ICDBG closeout documents for review and signature. Ensure all project and close out documents are submitted and approved by IDC. Ensure requested documents, concerns, and findings are addressed and resolved.

Responses should include and will be evaluated according to the following criteria:

Capability to Perform Project (i.e., firm’s history, areas of expertise, address of office that will manage project, length of time in business, firm’s legal structure, firm’s commitment to provide necessary resources to perform and complete project). (10-30 pts.)

Relevant Project Experience (i.e., description of other projects executed by the firm that demonstrate relevant experience; list of public sector clients for whom you have performed similar work in the past five years, include name, address, and phone number of a person who can be contacted regarding the firm’s performance on the project). (10-30 pts.)

Qualifications of Project Team (i.e., résumé for the key people assigned to the project including sub-consultants; key personnel roles and responsibilities on this project; identify project manager who will be responsible for the day-to-day management of project tasks and will be primary point of contact). (10-30 pts.)

Project Approach and Schedule (i.e., the tasks that must be accomplished to complete the project; how the firm proposes to execute the tasks; unique aspects of the project and alternative approaches the owner might wish to consider). (10-30 pts.)

Selection Committee Interview (Optional) - Firms may be asked to make brief presentations covering their relevant experience, their understanding of the project’s requirements and their own approach to designing and supervising the job. (10-30 pts.)

 Total Points Possible = 130

If applicable, selection of finalists to be interviewed will be based on an evaluation of the written responses. Award will be made to the most qualified administrator who is deemed most advantageous to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ City/County/Subrecipient, all evaluation criteria considered.

Questions should be directed to:

 Project Contact Person \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address

 City, State Zip Code

 Phone number

 Email address

Proposal must be submitted (electronically to \_\_\_\_\_\_\_\_\_) no later than (date) .

Identify the "Project Name and Grant Administration Services Proposal" on the subject line of the email.

The agreement will be on a fixed price basis, with payment terms to be negotiated with the selected offeror.

The City/County/Subrecipient of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

**EXHIBIT B**

 **Request for Proposals for Grant Administration Services**

The City/County/Subrecipient of is requesting proposals from qualified consultants for the planning, development, grant writing, and administration of a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Project Description)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The City/County/Subrecipient of anticipates applying for federal grant assistance to fund the project.

A copy of the RFP can be obtained from the City/County/Subrecipient at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Proposals will be evaluated and ranked on the following criteria. The maximum point value of each criterion is shown in parentheses:

 Capability to Perform Project ( )

 Relevant Project Experience ( )

 Qualifications of Project Team ( )

 Project Approach and Schedule ( )

 Selection Committee Interview (optional) ( )

Proposals are due at the following email address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Proposals are due by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 (time) (date)

The City/County/Subrecipient reserves the right to reject any and all proposals, to waive any irregularities in the proposals received, and to accept the proposal(s) deemed in the best interest of the City/County/Subrecipient.

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

 (Mayor/Commissioner Name)

**EXHIBIT C**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  Individual or Summary (circle one) Evaluation Rating SheetGrant Administration Services\*Points in categories must be the same as on RFP | Comments |  |  |  |  |  | Evaluator Signature and Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Total Points |  |  |  |  |  |
| SelectionCommitteeInterview \*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| ProjectApproach &Schedule\*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| Qualificationsof ProjectTeam\*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| RelevantProjectExperience\*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| Capabilityto Preform\*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| Name of Bidder |  |  |  |  |  |

**EXHIBIT D**

**This form is provided for assistance only. It does not constitute legal advice and is not a substitute for the Grantee’s independent legal obligation to make sure Grantee fully complies with state and local legal requirements. If Grantee has any question about its legal responsibilities, it should seek the advice of a licensed attorney.**

**Grant Administration Contract**

This contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between the City/County/Subrecipient of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Idaho, herein referred to as the “City or County or Subrecipient” and (name of Administrator), whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, herein referred to as the "Administrator", Witnessed:

WHEREAS, the (City/county/subrecipient) has made application to and has been approved by the Idaho Department of Commerce, herein referred to as "the Department”, for the receipt of grant funds under the Idaho Community Development Block Grant (CDBG) Program for purposes of (description of project); and

WHEREAS, the (City/County/Subrecipient) desires to engage the Administrator to render certain services related to the administration of the above described CDBG project; and

WHEREAS, the (City/County/Subrecipient) has complied with provisions for solicitation of contractors as cited in 2 CFR Part 200; and

WHEREAS, to ensure effective management of the above project, it is deemed to be in the best interests of the (City/county/subrecipient) to enter into an agreement with the Administrator as hereinafter provided;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. EMPLOYMENT OF CONTRACTOR

The (City/county/subrecipient) agrees to engage the Administrator, and the Administrator agrees to provide the services described in Section 6 in order to provide for the (administration and managing.) of the CDBG project for the (City/County/Subrecipient) as approved by the Department.

2. EMPLOYEE-EMPLOYER RELATIONSHIP

The contracting parties warrant by their signature that no employer-employee relationship is established between the Administrator and the (City/County/Subrecipient) by the terms of this contract. It is understood by the parties hereto that the Administrator is an independent contractor and as such neither it nor its employees, if any, are employees of the (City/County/Subrecipient) for purposes of tax, retirement system or social security (FICA) withholding.

3. CONTRACTOR’S INSURANCE

The Administrator warrants that it has obtained, and will maintain at its expense for the duration of this Contract, statutory worker's compensation coverage, employer's liability, and comprehensive general liability insurance coverage for its principals and employees for the services to be performed hereunder. The comprehensive general liability insurance shall have, at a minimum, a coverage limit of at least one hundred thousand dollars ($100,000) per claim, and five hundred thousand dollars ($500,000) aggregate.

4. LIAISON

The (City/county/subrecipient's) designated liaison with the Administrator is . The Administrator's designated liaison with the (City/County/Subrecipient) is. .

5. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Contract takes effect on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The services to be performed by the Administrator will be completed no later than .

1. SCOPE OF SERVICES

The Administrator will perform the services as identified and explained on Attachment “A” Scope of Work.

It is understood and agreed by the parties tha59t the services of the Administrator do not include any of the following: the disbursement or accounting of funds distributed by the (City/County/Subrecipient's) financial officer, legal advice, fiscal audits or assistance with activities not related to the CDBG project.

7. COMPENSATION

For the satisfactory completion of the services to be provided under this contract, the (City/County/Subrecipient) will pay the Administrator a sum, not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The amount paid out for each scope of work activity is identified on Attachment “A” Scope of Work.

8. CONFLICT OF INTEREST

The Administrator warrants that it presently has no interest and will not acquire any interest, direct or indirect, in the CDBG project that would conflict in any manner or degree with the performance of its services hereunder. The Administrator further covenants that, in performing this contract, it will employ no person who has any such interest. Should any conflict of interest, as defined by the CDBG Administrative Rules, arise during the performance of this contract, it will be disclosed and managed according to the CDBG rules.

9. MODIFICATION AND ASSIGNABILITY OF CONTRACT

This contract contains the entire agreement between the parties, and no statements, promises or inducements made by either party or agents of either party, that are not contained in the written contract, are valid or binding. This contract may not be enlarged, modified or altered except upon written agreement signed by both parties hereto. The Administrator may not sub-contract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the (City/county/subrecipient) and the Idaho Department of Commerce. Any sub-contractor or assignee will be bound by all of the terms and conditions of this contract.

10. TERMINATION OF CONTRACT

This contract may be terminated as follows:

a. Termination due to loss of funding.

 In the event that the Department reduces or terminates payments under the CDBG Program so as to prevent the (City/County/Subrecipient) from paying the Administrator with CDBG funds, the (City/County/Subrecipient) will give the Administrator written notice which sets forth the effective date of the termination and explains the reasons for the termination. The notice shall also describe the conditions for any reimbursement for any work completed.

b. Termination for Convenience

 The (City/County/Subrecipient) may terminate this contract in whole, or in part, for the convenience of the (City/County/Subrecipient) when both parties agree that the continuation of the project is not in the best interest of both parties and that further expenditure of funds will not produce any results. The parties shall agree in writing, upon the conditions, effective date, and fair and reasonable payment for work completed.

c. Termination for Cause

i. If the (City/County/Subrecipient) determines that the Administrator has failed to comply with the terms and conditions of this contract, it may terminate this contract in whole, or in part, at any time before the date of completion. If the Administrator fails to comply with any of the terms and conditions of this contract, the (City/County/Subrecipient) may give notice, in writing, to the Administrator of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period as specified in the notice, the (City/County/Subrecipient) may, with no further notice, declare this Contract to be terminated. The Administrator will thereafter be entitled to receive payment for those services reasonably performed to the date of termination, less the amount of reasonable damages suffered by the (City/County/Subrecipient) by reason of the Administrator's failure to comply with this contract.

ii. Notwithstanding the above, the Administrator is not relieved of liability to the (City/County/Subrecipient) for damages sustained by the (City/County/Subrecipient) by virtue of any breach of this contract by the Administrator, and the (City/County/Subrecipient) may withhold any payments to the Administrator for the purpose of setoff until such time as the amount of damages due the (City/County/Subrecipient) from the Administrator is determined.

 11. DOCUMENTS INCORPORATED BY REFERENCE

 The (City's/County's) application to the Department for CDBG funding, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, and all applicable federal and state statutes and regulations are incorporated into this contract including Idaho Code Section 67-2346 certification concerning boycott of Israel and Idaho Code Section 67-2359 ownership or operation by China.

12. CIVIL RIGHTS ACT OF 1964

 The Administrator will abide by the provisions of the Civil Rights Act of 1964 that states under Title VI, no person may, 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

 The Administrator will comply with the following provision: No person in the United States may, 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 the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

14. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

The Administrator will ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG assisted project will be extended to lower income project area residents.

15. MINORITY BUSINESS ENTERPRISE

 Consistent with the provisions of Executive Order 11246 and OMB Super Circular 2 Part 200, the Administrator will take affirmative steps to ensure minority businesses are used when possible as sources of supplies, equipment, construction, and services. Additionally, the Administrator must document all affirmative steps taken to solicit minority businesses and forward this documentation along with the names of the minority sub-contractors and suppliers to the (City/County/Subrecipient) upon request.

16. NONDISCRIMINATION

 The Administrator will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin.

17. OWNERSHIP AND PUBLICATION OF MATERIALS

 All reports, information, data, and other materials prepared by the Administrator pursuant to this contract are to be the property of the (City/county/Subrecipient) and the Department which has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or part. All such materials developed under this contract shall not be subject to copyright or patent in the United States or in any other country without the prior written approval of the (City/County/Subrecipient) and the Department.

18. REPORTS AND INFORMATION

 The Administrator will maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this contract and such other records as may be deemed necessary by the (City/County/Subrecipient) to ensure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the (City/County/Subrecipient) or its authorized representative, and will be retained for four (4) years after the expiration of this contract.

19. ACCESS TO RECORDS

 It is expressly understood that the Administrator's records relating to this contract will be available during normal business hours for inspection by the (City/County/Subrecipient), the Department, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, Office of Inspector General, and, when required by law, representatives of the State of Idaho.

20. CONSTRUCTION AND VENUE

 This Administrator will be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, venue is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Judicial District in and for the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of Idaho.

21. INDEMNIFICATION

 The Administrator waives any and all claims and recourse against the (City/County/Subrecipient), including the right of contribution for loss and damage to persons or property arising from, growing out of or in any way connected with or incident to, the Administrator's performance of this contract except for liability arising out of concurrent or sole negligence of the (City/County/Subrecipient) or its officers, agents or employees. Further, the Administrator will indemnify, hold harmless, and defend the (City/County/Subrecipient) against any and all claims, demands, damages, costs, expenses or liability arising out of the Administrator’s performance of this contract except for liability arising out of the concurrent or sole negligence of the (City/County/Subrecipient) or its officers, agents or employees.

22. LEGAL FEES

 In the event either party incurs legal expenses to enforce the terms and conditions of this contract, the prevailing party is entitled to recover reasonable attorney fees and other costs and expenses, whether the same are incurred with or without suit.

23. SPECIAL WARRANTY

 The Administrator warrants that nothing of monetary value has been given, promised or implied as remuneration or inducement to enter into this contract. The Administrator further declares that no improper personal, political or social activities have been used or attempted in an effort to influence the outcome of the competition, discussion or negotiation leading to the award of this contract. Any such activity by the Administrator shall make this contract null and void.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

GRANT ADMINISTRATOR CITY/COUNTY/SUBRECIPIENT OF

BY: BY:

Grant Administrator Chief Elected Official’s Signature

Title Title

Date Date

Attest: Attest:

ATTACHMENT A

SCOPE OF WORK

The Grant Administrator shall perform the activities as identified in this scope of work.

Pre-Development Stage:

The City/County/Subrecipient agrees to pay the Administrator a sum not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_ for Pre-Development Services **(not paid by CDBG)**:

Project planning and development

1. Meet with local governments and non-profits to discuss financing options to address identified needs.
2. Explain about the various funding programs. Detailing eligibility, application process, funding requirements, timelines, etc.
3. Conduct scoping with funding agencies to determine funding availability, verify eligibility, and probability. May include meeting with funding agency representatives.
4. Working with stakeholders define “the project”, for which funding will be applied for.
5. Review census data relative to project beneficiaries.
6. Assess project impacts on the community – environmental, socio-economic, and affordability / costs.
7. Procurement tutoring. Explain to community the RFP requirements for hiring consultants and bidding requirements for hiring contractors. Assist in setting up the procurement process.
8. Bond financing assessment and advancement. Assess with community the need, desire, and probability of pursuing debt financing (passing a bond). Educating and communicating to the general public bond financing including household cost. Presenting at public meetings.

Conducting an income survey, if necessary

1. Verify with funding agencies if survey is necessary.
2. Set-up survey - includes determining methodology, developing questionnaire, determining sample size, establishing random process, verify process with funding agencies, conduct survey, analyze results, and create survey report.
3. Coordinate surveying methodology with other funding agencies.
4. Document and explain survey results to local government and funding agency officials.

Assisting the applicant in establishing their RD Apply account and walking them through the application and submittal process.

 Preparing and writing CDBG application, including the public hearing.

Grant Administration Services (**paid for by CDBG**):

Activities (1 thru 9) listed below will be contingent on the City/county/subrecipient receiving CDBG funding.

1. Project Set-Up – file set-up, facilitating financial management procedures including cost allocation plan, meetings with grantee and stakeholders, submission of pre-contract documents, responding to inquiries, and explaining CDBG requirements to the Grantee and/or sub-recipient. These services will be completed for a lump sum amount of $\_\_\_\_\_\_\_\_\_\_\_\_.
2. Environmental Review – Conducting an environmental review that complies with 24 CFR Part 58. Duties include, but are not limited to, assessing project site, touring the site, gathering and verifying documentation, determining clearance level, preparing an environmental review record. Publishing and posting public notices. Gathering and tracking comments. Collecting any technical environmental studies from design professional. Debriefing (City or County) on the review. Establishing mitigation measures. Securing IDC’s environmental concurrence. These services will be completed for a lump sum amount of $\_\_\_\_\_\_\_\_\_\_\_\_.
3. Acquisition and Relocation – Ensure (City/County/Subrecipient) complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act for any property, permanent easements or long-term leases acquired for the CDBG project. Touring of the project site, determining acquisition activity, ensuring grantee meets either the voluntary, basic, or donation requirements as per the Uniform Act. Meeting with property owners. Submission of documentation. The department’s review and approval of process. These services will be completed for a lump sum amount of $\_\_\_\_\_\_\_\_\_\_\_\_.
4. Labor Monitoring – Ensuring construction contractors are meeting the requirements of the Davis Bacon Act, Copeland Act, CWHSSA and Fair Labor Standards Act. Duties include, but are not limited to, educating contractors about the labor requirements, providing labor documents and forms to contractors and their sub-contractors, identify appropriate wage determination, requesting additional wage classifications, reviewing and tracking payrolls, conducting employee interviews (on-site or through the mail), traveling to project site, observing workers, comparing payroll reports to interview information, documenting payroll reviews, identifying and investigating errors with contractor, reporting and facilitating the correction of errors or problems to IDC, and completion of required labor reports. These services will be completed for a lump sum amount not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_, which should be invoiced in monthly increments.
5. Project Monitoring (during procurement and construction) – Assist (City/County/Subrecipient) in setting up the procurement and selection of a design professional and/or contractors in accordance with CDBG requirements. Participating in pre-bid, pre-construction and construction progress meetings. Review of bidding documents, construction progress monitoring, reporting, and construction close-out. These services will be completed for a lump sum amount not to exceed $\_\_\_\_\_\_\_\_\_\_\_, which should be invoiced in monthly increments.
6. Financial management duties which includes coordinating contractor and design professional pay applications, preparation of CDBG request for funds, submission of request to IDC and ensuring proper disbursement of CDBG expenditures. These services will be completed for a lump sum amount not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_, which should be invoiced in monthly increments.
7. Civil Rights – Equal Access – Completing CDBG civil rights activities and documents. Duties include explaining and educating contractors on complying with Section 3 requirements and hiring of disadvantaged business enterprises. Submission of RFP to Idaho PTAC. Ensuring accurate completion of Section 3 Reports and the Contractor / Sub-contractor Activity Report. Assisting the (City or County) in conducting a Limited English Proficiency (LEP) four-factor analysis. Promoting disadvantage business enterprises and fair bidding practices. Ensure public display of EEO posters. Completing CDBG civil rights activities and documents. These services will be completed for a lump sum amount of $\_\_\_\_\_\_\_\_\_\_\_\_.
8. Fair Housing Actions – Helping to ensure the Grantee is taking steps to affirmatively further fair housing. Duties include ensuring the Grantee understands and adopts the fair housing resolution, proclaims April as fair housing month, and displays fair housing information. Assist and guide the Grantee in completing a fair housing assessment including identifying contributing factors and actions to mitigate the contributing factors. These services will be completed for a lump sum amount of $\_\_\_\_\_\_\_\_\_\_\_\_.
9. 504 / ADA Actions – Helping the Grantee to meet CDBG required Section 504 and ADA requirements. Duties include to help develop (or update) an ADA transition plan. Assist the Grantee in review and completion of the effective communication checklist. Ensure the Grantee has in-place a 504 coordinator, non-discrimination policy and ADA grievance procedure. Ensure the Grantee understands and publishes the – Notice under the ADA Act. If necessary, assist the Grantee in conducting (or updating) a self-evaluation of its facilities, services, and programs. These services will be completed for a lump sum amount of $\_\_\_\_\_\_\_\_\_\_\_\_.

The total amount paid in progress payments as listed above shall not exceed ninety percent (95%) of the total compensation sum.

1. Project Close-Out (5%) – Documentation that the (City or County) has met their CDBG national objective and contractual performance requirements, including substantial completion. Completing ICDBG closeout documents for review and signature. Ensure all project and close out documents are submitted and approved by IDC. Ensure requested documents, concerns, and findings are addressed and resolved. The department’s approval to close out. These services will be completed for a lump sum amount of $\_\_\_\_\_\_\_\_\_\_\_\_.

*Penalty*: The administrator shall lose $\_\_\_\_\_\_\_\_\_\_\_\_ or 5% of the total contract amount (whichever is greater) for each Finding of Non-Compliance or Finding of Violation attributable to the Administrator’s performance.

*Performance of Staff*: The (Administrator) will be responsible for the successful performance and completion of services by assigned staff as specified in the scope of work. (Administrator) will certify staff work is complete and in compliance with all CDBG program requirements prior to requesting payment for services.

**SECTION B**

**DESIGN PROFESSIONAL PROCUREMENT**

**(Engineering or Architectural Services)**

Almost all CDBG construction projects will need the services of at least one design professional. Design professionals are required to be licensed by the State of Idaho. CDBG funds can be used to pay for the services of a licensed design professional. The Owner may choose to contract out for professional services or perform these services with their own staff (force account or in-kind).

If the Owner determines to contract out for design professional services in order for these services to be eligible for CDBG funding, the Owner must follow a combination of federal and state procurement laws. This process is known as Qualification Based Selection (QBS). QBS is the selection of professional services based on qualifications as established and valued in the RFP.

An overview of design professional services may include but is not limited to:

* Understand the Owner’s needs
* Prepare a facility study
* Feasibility analysis
* Environmental Review assistance
* Plan, design, and engineering of construction project
* Prepare bidding documents
* Design project within budgetary constraints and applicable regulatory codes
* Cost estimation
* Bidding activities
* On-site observation of construction work
* Consult with owner regarding construction progress and quality
* Conduct inspection of work
* Prepare punch list
* Provide warranty inspection
* Review and certify contractor pay applications
* Compose an operation and maintenance manual

Exhibits in this section include:

* Request for Proposals for Design Professional Services, Sample Format
* Request for Proposals for Design Professional Services, Published Advertisement
* PTAC Solicitation Notice
* Evaluation Rating Sheet
* Interview Questions (Design Professional), Sample
* CDBG Agreement Attachment between Owner and Design Professional

**Small Purchase Procedure (estimated cost less than or equal to $50,000)**

The Owner can procure design professional services from any licensed designed professional believed to provide the best service. The Owner’s procurement procedures should be determined by their governing board, but at minimum the procedures should include selection based on demonstrated competence and qualifications to perform the type of service required.

At a minimum the following requirements will need to be met:

* Documentation from the Owner of the procedures used to hire the Design Professional.
* Execute contract with the CDBG Agreement Attachment between Owner and Design Professional (Exhibit F) only if CDBG is paying for design professional services, as part of the contract, and
* Submit signed contract to IDC. No payment will be made for design professional services until signed design professional contract is received.

**Competitive Negotiation/Proposals (estimated cost more than $50,001)**

The following steps need to be followed:

1. Prepare an RFP (Exhibit A) is a formal announcement that the community wants to hire a design professional. It identifies the community’s intent to hire a Design Professional for the project. The RFP should:
2. Indicate that proposals will be evaluated based on the QBS criteria format and the points associated with each criteria. Each criterion has a point range from 10 to 30. It is up to the Owner to determine the value of each criterion **(between 10 to 30 points), for a total 100** points. The following criteria should be used for evaluating the written proposals**:**

Capability to Perform Project 10-30 pts.

Relevant Project Experience 10-30 pts.

Qualifications of Project Team 10-30 pts.

Project Approach and Schedule 10-30 pts.

Total Proposal Points Possible = 100 pts.

Selection Committee Interview

(Optional) 10-30 pts.

(See Exhibit E – Interview Questions)

Total Points Possible = 110-130 pts.

**Note: If the Owner expects to receive a high number of proposals, the Owner has the option of interviewing the top scoring firms based on the written proposals. However, the intent of potentially implementing this option must be identified in the RFP.**

1. Outline the Scope of Services the community is seeking. Even if the immediate need is just an engineering report or facilities plan, make it clear that the proposal should cover the entire proposed project.
2. Choose solicitation scenarios that can be used on CDBG projects. Choose the scenario that is most effective for the Owner:

a. If the Owner is soliciting for **facilities plan or preliminary engineering review** **services**, THEN depending on the recommendation of the studies, the Owner may choose to expand the engineering services to include design and construction administration.

Example: “The City of Gem is accepting proposals for engineering services to conduct a facility study of the city owned wastewater treatment plant. The city may expand engineering services to include planning, design and construction administration of improvements to the treatment plant.”

1. If the Owner plans to solicit services for a **specific CDBG funded project** and has already completed a facility plan or preliminary engineering/architectural report.

Example: RFP – “The City of Gem is requesting proposals from qualified engineers to provide engineering and associated services for the planning, design, and construction administration of a wastewater treatment plant upgrade project.”

c. If the Owner is soliciting to establish a **list of qualified engineering firms** to develop a pool of firms to work on potential future projects.

Example: RFQ – “The City of Gem is accepting written proposals from qualified engineering firms for civil engineering services for planning, design and construction administration of city owned infrastructure. Services will be for a period of one year with two optional years.”

1. Identify the community contact person, proposal deadline, and number of hard copies and/or electronic version.

B. Advertise an RFP (Exhibit B)

The first publication of the RFP shall be at least two (2) weeks before the proposal submission due date. The RFP shall be published at least twice, not less than one (1) week apart, in a local newspaper of general circulation.

**Note: All sub-recipients will need to follow the same publishing and solicitation time frames as established with their sponsoring city or county.**

1. Forward to IDC a copy of the Solicitation Notice (Exhibit C) before first date of newspaper advertisement.

C. Ranking of Proposals

1. Upon receiving the proposals, rank the design professionals’ proposals based on criteria established in the RFP. This does include the written proposal and oral interview given to the selection committee (Exhibit E).

2. At least three (3) people must be on the selection committee. Individual rating sheets (Exhibit D) must be completed and signed by each selection committee member. No member of the selection committee can have an affiliation with a person or firm submitting a proposal.

3. Complete a Summary Rating Sheet (Exhibit D) to determine the highest ranked firm. Do not forget to check references of each firm. Point totals should be an average of all rating sheets.

1. Complete Summary Rating Sheet to determine the highest scoring firm, which is a combination of a written proposal and interview points as averaged by the committee.

|  |
| --- |
| Example Summary Rating Sheet |
| Design Professional Selection Committee Total Ave. Score |
|  |  |  |  |  |  |  |  |
| Design Professionals | Joe | Carol |  Jordan | Total |  |  |
| Leo Smart Engineers | 120 | 116 | 110 |  | 346/3 | = | 115.3 |
| The Fillmore Associates | 115 | 107 | 113 |  | 335/3 | = | 111.6 |
| CBGB Engineering | 110 | 106 | 105 |  | 321/3 | = | 107.0 |
| Mike Brady Architects | 101 | 95 | 91 |  | 287/3 | = | 95.6 |

 Highest Ranking Firm = Leo Smart Engineers

D. Negotiate and Execute Contract

1. Contact highest ranked firm and negotiate an agreement, a detailed scope of work, fee, and schedule. Negotiation does not need to be tense and unpleasant; it can be fruitful and positive if approached with an attitude of strength, cooperation and informed compromise. If agreement cannot be reached with the first-ranked firm, the Owner can move on to negotiate with the second-ranked firm and so on.

2. Before execution of the contract the Owner must provide documentation of the solicitation, copies of the evaluation forms, and a draft of the contract to the IDC. Note: These maybe submitted with grantee application.

3. Execute agreement with the CDBG Agreement Attachment between Owner and Design Professional (Exhibit F) only if CDBG funds are paying for design professional services. Send signed contract to IDC. No payment will be made for design professional services until an executed design professional services contract is received.

**EXHIBITS**

**FOR**

**SECTION B**

**DESIGN PROFESSIONAL**

 **Exhibit Name Page No.**

 Exhibit A: Request for Proposals for Design Professional Services,

 Sample Format 33

 Exhibit B: Request for Proposals for Design Professional Services,

Published Ad 35

Exhibit C: PTAC Solicitation Notice 37

Exhibit D: Evaluation Rating Sheet 39

 Exhibit E: Interview Questions (Design Professional), Sample 41

 Exhibit F: CDBG Agreement Attachment between Owner and Design Professional 43

**EXHIBIT A**

**Request for Proposals**

**for Design Professional Services**

The “Owner” is seeking design professional services for (description of project).

Services to be provided:

**Pre-Development Phase: (services not eligible for CDBG funding)**

1. Review existing engineering reports, existing mapping reports, and other pertinent information provided by the Owner.
2. Preparation of preliminary engineer’s report or facilities plan, suitable for submission to funding agencies such as Idaho DEQ and USDA – Rural Development, which identifies the problem and recommended course of action.
3. Assistance with Idaho Community Development Block Grant (CDBG) application including preparation of cost estimates, developing a project concept, and planning and/or preliminary design.

**Design and Construction Phase: (services eligible for CDBG funding)**

SAMPLE

* 1. Planning, designing, and engineering of construction project. Project design to include all structural, mechanical, electrical, and related systems.
	2. Surveying.

3. Preparing drawings, specifications and project cost estimates. Updating cost estimates as necessary.

4. Preparing bidding documents in conformance with applicable federal and state requirements and applicable building codes. Supervising the bid advertising, conducting pre-bid meeting, issuing of addendum, preparation of bid tabulation, assisting in bid opening, and advising on bids.

5. Advising on issuance of Notice to Proceed. Conducting the pre-construction conference and progress meetings.

6. Consulting with the Owner regarding construction progress and quality.

7. On-site observation of construction work, submittal review, and preparing inspection reports.

8. Reviewing and approving all contractor requests for payment and submitting approved requests to the governing body.

1. Preparing and managing punch list.
2. Providing reproducible plan drawings to the Owner upon project completion.

11. Conducting final inspection and testing.

12. Submitting certified “as built” drawings to the Owner and required regulatory agencies.

1. Preparing an operation and maintenance manual.

14. Assisting on conducting a warranty walk-thru.

15. Participation in public meetings.

Respondents will be evaluated according to these criteria:

Capability to Perform Project (i.e., firm’s history, areas of expertise, address of office that will manage project, length of time in business, firm’s legal structure, firm’s commitment to provide necessary resources to perform and complete project). (10-30 pts.)

Relevant Project Experience (i.e., description of other projects executed by the firm that demonstrate relevant experience. List of public sector clients for whom you have performed similar work in the past five years, which should include name, address, and phone number of a person who can be contacted regarding the firm’s performance on the project). (10-30 pts.)

Qualifications of Project Team (i.e., résumé for the key people assigned to the project including sub-consultants. Key personnel roles and responsibilities on this project. Identify project manager who will be responsible for the day-to-day management of project tasks and will be primary point of contact). (10-30 pts.)

Project Approach and Schedule (i.e., the tasks that must be accomplished to complete the project. How the firm proposes to execute the tasks. Unique aspects of the project and alternative approaches the owner might wish to consider). (10-30 pts.)

SAMPLE

 Total Written Proposal Points Possible = 100

Selection Committee Interview. Firms may be asked to make presentations covering their relevant experience, their understanding of the project’s requirements and their own approach to designing and supervising the job. (10-30 pts.)

 Total Proposal Points Possible = 130

Award will be made to the most qualified offeror who is deemed most advantageous to the Owner, all evaluation criteria considered. The Owner may choose to interview only the top ranking firms as based on proposal review and scores. Unsuccessful offeror will be notified.

Questions and responses should be directed to: Project Contact Person

 Phone Number

 Email address

Proposal must be submitted (electronically to \_\_\_\_\_\_\_\_\_) no later than (date) .

Identify the "Project Name and Design Professional Services Proposal" on the subject line of the email.

The Owner reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

**EXHIBIT B**

**Request for Proposals for Design Professional Services**

(Published Advertisement)

The Owner is requesting proposals from qualified design professionals to provide engineering and associated services for (services needed and type of project) .

A copy of the RFP may be obtained from the Owner at the following email address or website.

Proposals will be evaluated and ranked on the following criteria. The maximum point value of each criterion is shown in parentheses:

 Capability to Perform Project ( )

 Relevant Project Experience ( )

 Qualifications of Project Team ( )

 Project Approach and Schedule ( )

 Selection Committee Interview ( )

SAMPLE

Questions should be directed to:

 Contact Person \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address

 City, State Zip Code

 Phone number

 Email address

Proposal must be submitted (electronically to \_\_\_\_\_\_\_\_\_) no later than (date) .

Identify the "Project Name and Design Professional Services Proposal" on the subject line of the email.

The Owner reserves the right to reject any and all proposals, to waive any irregularities in the proposals received, and to accept the proposal(s) deemed in the best interest of the City/County/Subrecipient.

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

(Mayor/County Commissioner Name)

Published: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date 1st & 2nd publishing)

**EXHIBIT C**

**Idaho Procurement Technical Assistance Center (PTAC)**

**Solicitation Notice**

Applicable to: Design Professional Services

Owner:

Address:

Contact Person: Phone:

Date Submitted:

Type of service for which bids will be solicited: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Brief project description or list of activities:

Proposal Due Date

Email form to:

Commerce’s Regional Specialist

**EXHIBIT D**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Individual or Summary (circle one) Evaluation Rating SheetDESIGN PROFESSIONAL SERVICES\*Points in categories must be the same as on RFP | Comments |  |  |  |  |  | Evaluator Signature and Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Total Points |  |  |  |  |  |
| SelectionCommitteeInterview \*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| ProjectApproach &Schedule\*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| Qualificationsof ProjectTeam\*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| RelevantProjectExperience\*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| Capabilityto Preform\*\_\_\_\_\_Pts.Pts. Awarded |  |  |  |  |  |
| Name of Bidder |  |  |  |  |  |

**EXHIBIT E**

**Sample Interview Questions**

Listed below are a series of interview questions that may be asked of the design professional firm. Questions can be expanded or modified as appropriate.

What similar project experience do you have?

What is the firm’s capacity to perform the work?

What is the firm’s understanding of the project needs?

Discuss the methodology the firm proposes to use in providing the required services.

Discuss the consultants, if any, who may be working with the firm on the project.

Discuss how the firm will handle the planning, design, and construction phases of the project.

How will the firm handle construction cost controls in the design and construction phases of the work?

Discuss the time schedule the firm proposes to complete the necessary preliminary work as well as the time schedule for the entire project.

Does your firm have the ability to determine accurate construction costs?

Discuss your methods of determining your compensation.

Identify the last two projects the firm has completed. How many change orders were issued on each of these two projects? Why were the change orders issued?

What is your experience working with state and federal agencies both regulatory as well as funding agencies?

How will you keep us informed of the project progress?

Whom will we be working with on the day-to-day matters?

Please tell us what you see as our problem, the potential remedies, and likely obstacles.

What are your ideas on how we can save money on the design and construction of this project?

 **EXHIBIT F**

 Project Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Owner (Initial): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Design Professional (Initial): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attachment \_\_\_\_\_\_

Idaho Community Development Block Grant (CDBG) Agreement Attachment

Between Owner and Design Professional

1. Time of Performance

The Design Professional’s schedule for preparing and delivering shall be as follows:

* Draft Bidding Documents and Drawings for review by applicable regulatory agencies and Owner within \_\_\_\_\_\_\_\_\_\_\_ calendar days of the execution of the agreement between the Owner and Design Professional.

2. Environmental Mitigation Measures

The Design Professional will design the project to comply with mitigation measures as established and identified in the CDBG environmental review completed in accordance with 24 CFR Part 58.

3. Clean Air and Water (contracts in excess of $100,000)

The Design Professional shall comply with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857h-4 transferred to 42 USC 7607), section 508 of the Clean Water Act (33 USC 1368) , Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

4. Energy Efficiency

The Design Professional shall comply with the 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 codified at 42 USCA 6321 et. seq.).

5. Minority Business Enterprise

Consistent with the provisions of Executive Order 11246 and OMB Super Circular 2 Part 200, the Design Professional will take affirmative steps to ensure minority businesses are used when possible as sources of supplies, equipment, and construction and services. Additionally, the Design Professional should document all affirmative steps taken to solicit minority businesses and forward this documentation to the Owner upon request.

6. Ownership of Document

All drawings, specifications, studies, and other material prepared under this contract shall be the property of the Owner and at the termination or completion of the Design Professional’s services shall be promptly delivered to the Owner. The Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the Owner of its full rights of ownership. It is understood, however, that the Design Professional does not represent such data to be suitable for re-use on any other project or for any other purpose. If the Owner re-uses the subject data without the Design Professional’s written verification, such reuse will be at the sole risk of the Owner without liability to the Design Professional.

7. Debarment

The Design Professional by executing this contact certifies that neither it nor any firm, corporation, partnership or association in which it has a substantial interest is designated as an ineligible firm by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5).

8. Reports and Information

The Design Professional will maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this contract and such other records as may be deemed necessary by the Owner to ensure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or its authorized representative, and will be retained for five (5) years after the expiration of this contract.

9. Access to Records

It is expressly understood that the Design Professional’s records relating to this contract will be available during normal business hours for inspection by the Owner, the Department, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, Office of Inspector General, and, when required by law, representatives of the State of Idaho.

10. Employee-Employer Relationship

The contracting parties warrant by their signature that no employer-employee relationship is established between the Contractor and the Owner by the terms of this contract. It is understood by the parties hereto that the Design Professional is an independent contractor and as such neither it nor its employees, if any, are employees of the Owner for purposes of tax, retirement system or social security (FICA) withholding.

11. Design Professional’s Insurance

The Design Professional warrants that it has obtained, and will maintain at its expense for the duration of this Contract, statutory worker's compensation coverage, employer's liability and comprehensive general liability insurance coverage for its principals and employees for the services to be performed hereunder. The comprehensive general liability insurance shall have, at a minimum, a coverage limit of at least five hundred thousand dollars ($500,000) per occurrence, and one million dollars ($1,000,000) aggregate.

12. Conflict of Interest

The Design Professional warrants that it presently has no interest and will not acquire any interest, direct or indirect, in the CDBG project that would conflict in any manner or degree with the performance of its services hereunder. The Design Professional further covenants that, in performing this contract, it will employ no person who has any such interest. Should any conflict of interest, as defined by the CDBG Administrative Rules, arise during the performance of this contract, it will be disclosed and managed according to the CDBG rules.

13. Modification and Assignability of Contract

This contract contains the entire agreement between the parties, and no statements, promises or inducements made by either party or agents of either party, that are not contained in the written contract, are valid or binding. This contract may not be enlarged, modified or altered except upon written agreement. The Design Professional may not sub-contract or assign its rights (including right to compensation) or duties arising hereunder without the prior written consent of the Owner and the Idaho Department of Commerce. Any sub-contractor or assignee will be bound by all of the terms and conditions of the Agreement.

14. Section 109 of the Housing and Community Development Act of 1974

The Design Professional will comply with the following provision: No person in the United States may, 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 the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

15. Nondiscrimination

The Design Professional will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, gender, age, marital status, physical or mental handicap or national origin.

16. Certification Concerning Boycott of Israel. Pursuant to Idaho Code section 67-2346, if payments under the Grant exceed one hundred thousand dollars ($100,000) and Design Professional employs ten or more persons, Design Professional certifies that it is not currently engaged in, and will not for the duration of the Grant engage in, a boycott of goods or services from Israel or territories under its control.

17. Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Design Professional certifies that it is not currently owned or operated by the government of China and will not for the duration of the Grant be owned or operated by the government of China.

**SECTION C**

**CDBG CONSTRUCTION PROCUREMENT PROCESS**

This section contains instruction and forms used for procurement procedures that will aid the Owner (cities, counties, or subrecipients) in the procurement of construction services for Idaho Community Development Block Grant (CDBG) funded projects.

Exhibits in this section include:

* Construction Bid Document Review Certification Form

Forms relevant to procurement located in other manual chapters:

* CDBG Construction Supplemental Conditions (Labor Chapter)
* Pre-Construction Conference Checklist (Labor Chapter)

**CDBG Procurement**

CDBG funded projects are usually the construction of infrastructure or facilities (sewer, water, sidewalks, storm water drainage, and buildings) to improve deficiencies and provide a community benefit. The Owner may choose one of four types of construction contracts such as construction management, design build, or multiple prime, (see diagrams) but the most common type used for a CDBG project is single bid.

* Construction Contract, Single Bid – Involves competitive bidding for a single construction contract. For a single bid construction contract, the bidding documents are prepared by a design professional for the Owner and are made available, via formal or non-formal advertisement, to qualified contractors. Contractors determine the price, including profit, for which the project can be built. The bids are submitted to the Owner. After the Owner and design professional analyze the bids, the Owner selects the lowest responsive and responsible bidder. The contractor then constructs the project in accordance with the bidding documents.
* Multiple Prime Contract – Using this method, the Owner divides the work among several contractors and enters into a separate contract with each, e.g., paving, site work etc. For multiple projects the architect/engineer will usually prepare a separate set of construction documents for each contract. (i.e. Senior center projects)
* Construction Management (Representative or General Contractor) – A project involving construction management may have either single or multiple prime contracts. In either case, the construction manager is an added participant in the process who is employed by the owner to oversee and administer the project.
* Design-Build – For a design-build project, the Owner contracts with a single party not only to build the project but also to design it. Typically, this type of service is provided by a contractor associated with an architect/engineer.

**Diagram of typical CDBG projects**

**Competitive Single Bid**

**Sub-Contractor**

**Contractor**

**Surveyor**

Design Contract

**Grant Administrator**

**Electrical Engineer**

**Architect / Engineer**

Construction Contract

**Sub-Contractor**

**Sub-Contractor**

**Successful Bidder**

Consultant Contract

**Bidder**

**Bidder**

Sub-Contract

Consultant Contract

**Owner or**

**Grantee**

Sub-Contract

**Multiple Prime Contract**

Sub-Contract

Construction Contract

Design Contract

**Architect / Engineer**

**Bidder**

**Bidder**

**Successful Bidder**

**Architect / Engineer**

**Contractor**

Construction Contract

Construction Contract

**Successful Bidder**

**Contractor**

**Bidder**

Design Contract

**Grant Administrator**

**Owner or Grantee**

Sub-Contract

**Sub-Contractor**

**Construction Management (General Contractor)**

**Owner or Grantee**

**Grant Administrator**

**Construction Manager (GC)**

Sub-Contract

**Sub-Contractor**

**Successful Bidder**

**Sub-Contractor**

**Bidder**

**Bidder**

**Design-Build**

**Administrative Professional (Architect or Engineer)**

 **Owner or Grantee**

**Sub-Contractor**

**Architect / Engineer**

**Sub-Contractor**

**Sub-Contractor**

Sub-Contract

Sub-Contract

**Contractor**

**Grant Administrator**

**CONSTRUCTION CONTRACT –** three methods of procurement: 1) micro procedure 2) small purchase procedure and 3) competitive sealed bid or formal advertising.

**Construction – Micro Procedure (estimated cost up to $25,000)**

The Owner can purchase from any contractor believed to provide the best value. The Owner’s procurement procedures should be determined by their governing board

* Other Requirements
	+ Insurance requirements (Commercial General Liability; Worker’s Comp, Automobile Liability)
	+ Debarment Clearance
	+ Davis-Bacon Wage Rates are applicable if contract is over $2,000
	+ Contract / Work Order / Proposal

**Construction – Small Purchase Procedure (estimated cost between $25,001 and $150,000)**

* The Owner shall solicit in writing an invitation to bid (via mail or email) to at least three (3) licensed public works contractors if over $50,000.
* At a minimum the contractors should have at least seven (7) days to submit their bids. The date and time of the bids due date needs to be included in the invitation to bid. Bids are not required to be opened in a public format. A written record of the solicitation and bids needs to be documented in the Owner’s file. Documentation must include the invitation to bid, how the invitation was solicited, what contractors were solicited, bids or responses received, and justification for award to lowest responsive and responsible bidder.
* Other Requirements
	+ Insurance requirements (Commercial General Liability; Worker’s Comp, Automobile)
	+ Bidding Document Certification
	+ Davis-Bacon Wage Rates are applicable (if CDBG is paying for construction)
	+ Ten (10) day wage rate update
	+ Bid Tabulation and Analysis
	+ Debarment Clearance
	+ Award Notice or letter
	+ Contract
	+ Pre-Construction Meeting
	+ Notice to Proceed

**Construction - Competitive Sealed Bid (estimated cost over $150,001)**

**Step 1 –** The design professional prepares bidding documents and invitation to bid for the project. The bidding document is a combination of bidding requirements, contract forms, and conditions to the contract, specifications, drawings, and addenda. For a CDBG funded construction project, additional documents that will need to be included in the bidding documents are the Section 3 certification form, CDBG supplemental conditions, current wage decision, and federal labor standards. (Forms in Labor Chapter)

**Step 2 –** The Grant Administrator is responsible for obtaining the appropriate wage determination (highway, heavy, building, or residential) and most current decision. Wage determinations can be obtained at the following web address: http://sam.gov/.

**Step 3 –** Once the Design Professional has completed the bidding documents and the documents have been reviewed by the appropriate regulatory agency, the Grant Administrator will need to review and certify the proper clauses, provisions, and forms are included in the bidding document before solicitation. Send certified bid document review form (see Exhibit A – Bid Document Certification Review Form) to your IDC Specialist along with a copy of the bidding documents and plans fifteen (15) days before bid due date. Bidding documents may be sent electronically.

**Step 4 –** As this is competitive sealed bid procurement, the Owner is required to solicit the invitation to bid in the local newspaper of general circulation. The notice inviting bids shall set a date and place for the opening of bids. The first publication of the notice shall be at least two (2) weeks before the date of opening the bids. Notice shall be published at least twice, not less than one (1) week apart.

**Note: All sub-recipients will need to follow the same publishing and solicitation time frames as established with their sponsoring city or county.**

Concurrently during solicitation, the Owner will need to hold a Pre-Bid Meeting. The meeting, held before the bid opening, is to allow the bidders the opportunity to view the actual work site, ask questions, and better understand the proposed project. The pre-bid meeting is also beneficial to the owner and design professional, as they will better understand the bidder’s concerns and issues, as well as answer questions. The design professional shall respond to questions in writing through an addendum.

**Step 5 –** Concurrentlyduring solicitation**,** the Grant Administrator will need to conduct a ten (10) day wage rate update using Davis-Bacon Web site: <http://sam.gov/> > Wage determination > Public Building or Works to ensure the most current decision is being used. Send completed form to the IDC Specialist. (Exhibit in Labor Chapter)

**Step 6 –** Bid Opening of Competitive Sealed Bids.

* Do not open bids before advertised date and time.
* Publicly open and read aloud bids received.
* Bids will be taken under advisement at this time.
* Do not accept or open late bids.

**Step 7 –** The Owner, with the assistance of the Design Professional and Grant Administrator, will need to identify if the bids received are responsive and which bid is the lowest. The Design Professional should prepare a bid tabulation and analysis of bids and recommendation for award. Submit the bid tabulation to your IDC Specialist. Determine if lowest responsive bidder is a responsible bidder.

The Grant Administrator will need to conduct a debarment clearance via an IDC Specialist. The IDC Specialist will verify if the contractor is suspended or debarred from entering into a federally funded contract.

**Step 8 –** Owner provides Award Notice letter to successful bidder. Notice should indicate that the bidder will need to submit performance and payment bonds accompanied by power of attorney, Steps to Comply with Section 3 form, certificates of insurance, and contractor/sub-contractor certification, (found in Labor Chapter). Submit proof of award to your IDC Specialist.

**Step 9 –** The Owner can now proceed with the execution of the construction agreement. Remember, it is critical that the agreement form used identifies that the contract documents consist of contract forms, conditions to the contract, specifications, drawings, specific environmental mitigation measures, addenda, and contract modifications/change orders. Think of the agreement form as a clamp that binds the documents together.

**Step 10** – Hold the Preconstruction Conference. The conference should include the grantee/owner, design professionals, contractor, sub-contractors, grant administrator, and other funding agency representatives. The agenda at the preconstruction conference should cover the CDBG preconstruction conference checklist (Labor chapter). The CDBG checklist and other conference minutes need to be submitted to your IDC Specialist five (5) days after the conference.

**Step 11 –** Owner issues Notice to Proceed. The notice should contain start date of the contract and the number of days to complete work or substantial completion date. Submit copy of notice to your IDC Specialist.

**Step 12** – Procurement does not stop at the Construction Phase. The CDBG program requires, at a minimum, the following processes are implemented.

* Construction progress meeting shall be held during construction. Attendees should include Owner, grant administrator, design professional, and contractor.
* Any change orders issued on the project are required to be justified and cost reasonable. Change orders must be discussed with your IDC Specialist. Copy of executed change orders need to be sent to IDC. Copies not received may hold up the CDBG progress payment or result in non-payment.

**Step 13** – A pre-final inspection shall be held to determine completion of work to date and quality of work. If all parties determine substantial completion of work has been completed, a certificate of substantial completion shall be issued. Certificate shall be signed by Owner, design professional, and contractor. The certificate should also contain a list of items to be completed or corrected. Submit certificate to your IDC Specialist as well as Section 3 Summary Report and Contractor/Subcontractor Activity Report.

**Step 14** – The process of improving infrastructure is dynamic. Owner should receive an Operations & Maintenance manual and “as-built” drawings. The Owner should also educate the public about their responsibility to maintain the new systems, from water conservation practices to not pouring medication down the toilet or drain.

**Step 15 –** Eleven (11) months after completion of construction, the Owner and Design Professional shall formally inspect work to ensure construction work, materials, and equipment are meeting performance and warranty requirements.

**EXHIBITS**

**For**

**Section C**

**CDBG Construction Procurement Process**

 **Exhibit Name Page No.**

 Construction Bid Document Review Certification 55

**Note: CDBG bidding documents are located in the Labor Chapter.**

**EXHIBIT A**

**CDBG Construction Bid Document Review Certification**

Project Name:

Grant Number:

Below is a list of following CDBG clauses, provisions, or forms that are required to be included in the project bidding documents.

\_\_\_\_Bidding Requirements

-Invitation to Bid

-Instruction to Bidders

-Bid Form (ensure firm fixed bid)

-Bid Bond (5% if greater than $150,000)

-Sub-contractor List (ensure HVAC, plumbing, and electrical listed with public works license number)

Optional

\_\_\_\_Bidder’s Qualification

\_\_\_\_Supplier’s List

\_\_\_\_Bidder’s Checklist

\_\_\_\_Contract Forms

-Agreement

-Performance Bond (100%) is required for projects greater than $150,000. May be referenced.

-Payment Bond (100%) is required for projects greater than $150,000. May be referenced.

-Section 3 Certification form – The Steps to Comply

-Contractor’s Certification concerning Labor Standards and Prevailing Wage

-Sub-contractor’s Certification concerning Labor Standards and Prevailing Wage

\_\_\_\_Contract Conditions

\_\_\_\_General Conditions

-Commercial General Liability

-Worker’s Compensation Insurance

-Automobile Insurance

-Administrative, Contractual, or Legal Remedies

-Termination for Cause and for Convenience

\_\_\_\_CDBG Supplemental Conditions

-Certification of Non-segregated Facilities

-Contract Pricing

-Data, Patent, and Copyright

-Access to Records

-Architectural Barrier Act

-Lead Based Paint

-Clean Air and Water Act

-Davis-Bacon and Related Acts

-Copeland “Anti-Kickback” Act

-Contract Work Hours and Safety Standards Act

-HUD Section 3

-Executive Order 11246: Equal Employment Opportunity

\_\_\_\_Federal Labor Standards Provision (HUD-4010)

\_\_\_\_Prevailing Wage Rates (do not forget about the 10-day wage rate update)

\_\_\_\_Drawings and Specifications

 \_\_\_\_Engineer or Architect Seal

\_\_\_\_Are Environmental Mitigation Measures being addressed in the bidding document?

 If yes, where are the measures located within the document?

As the Grant Administrator, I have reviewed and certify the final bidding documents contain the necessary CDBG applicable clauses, provisions and forms for the (Project Name) .

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

Signed

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

Dated

**SECTION D**

**Design, Supply, Deliver, and Construct Procurement Process**

This section contains information about the procurement of a public facility that due to its materials and equipment structure doesn’t effectively match with the CDBG four types of construction contracts, that are identified in Section C. The CDBG public facility projects, where it might be more effective to utilize a design, supply, deliver, and construct procurement process are pre-fab restrooms, playground equipment, splash pads, and street lights. The construction including installation portion of the project is subject to prevailing wage (Davis-Bacon) requirements.

Note: it is possible that under design, supply, deliver, and construct procurement that the actual construction which includes installation could be done by the Owner’s public works staff or a separate construction contract. In this format, the supplier may provide technical assistance.

|  |
| --- |
| Firefighter female with solid fillWait a minute. What about other CDBG public facilities - fire engines/ trucks?Procurement of a fire engine / truck can be accomplished in using one of three methods – invitation to bid, request for proposals, or intergovernmental / joint purchasing agreements. Contact your Commerce Specialist before commencing with either procurement. |

Forms in this appendix include:

* Design, Supply, Deliver and Construct Bid Document Review Certification Form
* CDBG Design, Supply, Deliver and Construct Supplemental Conditions

**Design, Supply, Deliver, and Construct Procurement** – Four methods of procurement:

1) micro purchase procurement 2) small purchase procurement, 3) competitive sealed bid and 4) request for proposals (RFP).

**Design, Supply, Deliver and Construct – Micro Procedure (estimated cost up to $25,000)**

The Owner can purchase from any contractor believed to provide the best value. The Owner’s procurement procedures should be determined by their governing board

* Other Requirements
	+ Insurance requirements (Commercial General Liability; Worker’s Comp, Automobile Liability)
	+ Debarment Clearance
	+ Davis-Bacon Wage Rates are applicable if contract is over $2,000.
	+ Contract / Work Order / Proposal

**Design, Supply, Deliver and Construct – Small Purchase Procedure (estimated cost between $25,001 and $150,000)** The Owner must award contract to lowest responsive and responsible bidder.

* The Owner shall solicit in writing an invitation to bid (via mail or email) to at least three (3) qualified contractors. At a minimum the contractors should have at least seven (7) days to submit their bids. The date and time of the bid’s due date needs to be included in the invitation to bid. Bids are not required to be opened in a public format. A written record of the solicitation and bids received needs to be documented in the Owner’s file**.**
* Owner must award contract to lowest responsive and responsible bidder.
* Other Requirements
	+ Insurance (Commercial General Liability; Worker’s Comp, Automobile)
	+ Design, Supply, Deliver and Construct Document Certification.
	+ Bid Tabulation and Analysis.
	+ Debarment Clearance

**Design, Supply, Deliver and Construct - Competitive Sealed Bid (estimated cost over $150,001)**

**Step 1** – The Owner (and Design Professional if utilizing) prepares bidding documents and invitation to bid for the project. The bid document is a combination of invitation to bid, instructions to bidders, bid forms, agreements, general conditions, CDBG design, supply, deliver and construct supplemental conditions (see Exhibit B), technical specifications, drawings and addenda.

**Step 2** – Grant Administrator reviews and certifies supply and deliver bid documents before solicitation. Send signed design, supply, deliver and construct document review form (see Exhibit A) to IDC along with a copy of the bid documents and plans, if any, before bid opening.

**Step 3 –** As this is a competitive sealed bid procurement, the Owner is required to solicit the invitation to bid in the local newspaper of general circulation. The bid invitation notice shall set a date and place for the opening of bids. The first publication of the notice shall be at least two (2) weeks before the date of opening the bids. Notice shall be published at least twice, not less than one (1) week apart.

**Note: All sub-recipients will need to follow the same publishing and solicitation time frames as established with their sponsoring city or county.**

Concurrently the Owner may want to hold a pre-bid meeting. The meeting held before the bid opening is to allow bidders to inspect the work site, discuss specifications and requirements, and revisions to requirements, and address questions of potential bidders. The Owner should respond to questions in writing through an addendum.

**Step 4 –** Bid Opening of Competitive Sealed Bids

* Do not open bids before advertised date and time.
* Publicly open and read aloud bids received.
* Bids will be taken under advisement at this time.
* Do not accept or open late bids.

**Step 5 –** The Owner with the assistance of the Design Professional and Grant Administrator will need to identify if the bids received are responsive and which bid is the lowest. The Design Professional should prepare a bid tabulation form and analysis of bids and recommendation for award. Submit the bid tabulation form to your IDC Specialist. Determine if lowest responsive bidder is a responsible bidder.

The Grant Administrator will conduct a debarment clearance, via an IDC Specialist. The IDC Specialist will verify if the contractor is suspended or debarred from entering into a federally funded contract.

**Step 6 –** Owner provides Award Notice letter to successful bidder. Notice should indicate that the bidder will need to submit a performance bond accompanied by a power of attorney and certificate of insurance.

**Step 7** - The Owner can now proceed with the execution of the contractor. It is critical that the agreement form used identifies that the contract documents consist of contract forms, conditions to the contract, specifications, drawings, addenda and contract modifications/change orders. Submit the contract documents to your IDC Specialist.

**Step 8** – It may be necessary to hold a pre-construction conference with the supplier. Topics such as submittal process, risk of loss or damage of goods, shipment and deliver of goods, payments, party responsibilities, and warranty and guarantees will need to be addressed.

**Step 9** – Owner issues notice to proceed. The notice should contain start date of the contract and the number of days to complete work or substantial completion date. Submit notice to proceed to your IDC Specialist.

**Step 10** – During design, supply, deliver, and construct phase:

* Change orders issued on the project are required to be justified and cost reasonable. Copy of change orders need to be sent to IDC. Copies not received may hold up CDBG progress payments.

**Step 11** – A pre-final inspection shall be held to determine completion of work to date and quality of work. If all parities determine substantial completion of work has been completed, a certificate of substantial completion or letter supporting completion of project shall be issued. The letter or certificate shall be signed by the Owner, Design Professional, and Contractor. The letter or certificate should also contain a list of items to be completed or corrected. Submit certificate to your IDC Specialist.

**Step 12** – The Owner should receive an Operations & Maintenance manual and “as built” drawing from the contractor.

**Step 13** – Eleven (11) months after completion of construction, the Owner shall formally inspect the materials, equipment and fixtures to ensure they are meeting performance and warranty requirements.

**Design, Supply, Deliver and Construct - Request for Proposals:** The Owner may utilize a request for proposal process as an alternative to the competitive bidding process required by section 67-2806 Idaho Code, when the Owner contemplates a procurement for materials and equipment which:

* Fixed specifications might preclude the discovery of a cost-effective solution;
* A specific problem is amenable to several solutions; or
* Price is not the sole determining factor for selection.

Factors that may be considered in the evaluation of contractors in a request for proposal process include but are not limited to: (apply relative weights to the chosen factors)

* An innovative solution that is offered;
* Unique product features;
* Price; (required to be one of the factors)
* Contractor experience in the market;
* Financial stability of the contractor;
* Differences among contractors in their ability to perform contract requirements;
* Ability to meet product specifications;
* Product quality;
* Product performance records;
* Past performance by the contractor;
* Future product maintenance or service requirements; and
* Product warranties.

At a minimum, a request for proposal shall state the instructions of the process, the scope of work, the selection criteria, contract terms and the scoring methodology applying relative weights to factors considered.

Notifications, solicitation and consideration of contests concerning the award of procurement pursuant to a request for proposal shall be in accordance with the minimum requirements established in section 67-2806, Idaho Code, subject to the selection criteria established at the outset of each such procurement. Records compiled in the scoring process shall be made available for public inspection when a procurement recommendation is made to the Grantee’s board.

Note: Contact your IDC specialist prior to utilizing the design, supply, deliver and construct request for proposals (RFP).

**Typical - Design, Supply, Deliver and Construct Procurement**

Prepare

**Procurement and Construction Documents**

**Architect Engineer**

Design Contract

**Owner or Grantee**

**Grant Administrator**

 Contract

**Contractor**

Construction / Manufacture

**Goods / Work**

**ie. Precast Concrete Restrooms**

 **Playground Equipment**

**Typical - Design, Supply, Deliver Procurement and then Construct Procurement**

Prepare

Prepare

**Construction Documents**

**Procurement Documents**

**Architect / Engineer**

Design Contract

**Grant Administrator**

**Owner or Grantee**

Construction Contract

Procurement Contract

**Goods Contractor**

**Construction Contractor**

Manufacture

Construction

**Goods**

**ie. Manufactures Street Lights**

**Work**

**ie. Install Street Lights**

**EXHIBITS**

**SECTION D**

**CDBG Design, Supply, Deliver, and Construct Procurement Process**

 **Exhibit Name Page No.**

 Design, Supply, Deliver and Construct Bid Document Review Certifications….…. 65

 Design, Supply, Deliver and Construct Supplemental General Conditions………. 67

**EXHIBIT A**

**CDBG Design, Supply, Deliver and Construct**

**Bid Document Review Certification**

Project Name:

Grant Number:

Below is a list of following CDBG clauses, provisions, or forms that are required to be included in the project procurement documents. \_\_\_

 Bidding Requirements

-Invitation to Bid

-Instruction to Bidders

-Bid Form (ensure firm fixed bid)

-Bid Bond (5%)

Optional

\_\_\_\_Bidder’s Qualification

\_\_\_\_Bidder’s Checklist

 Contract Forms

-Agreement

-Performance Bond (100%) for projects greater than $150,000. The bond form can be referenced.

 Contract Conditions

 General Conditions

-Commercial General Liability

-Idaho Worker’s Compensation Insurance

-Automobile Insurance

-Administrative, Contractual, or Legal Remedies

\_\_\_\_CDBG Design, Supply, Deliver and Construct Supplemental General Conditions

 If Construction, include Federal Labor Standards Provisions HUD form 4010 and

 Davis-Bacon wage rates.

 Drawings and Specifications

 Engineer’s or Architect’s Seal

 Environmental Mitigation Measures (Are mitigation measures being addressed?)

As the Grant Administrator, I have reviewed and certify the final bidding documents contain the necessary CDBG applicable clauses, provisions and forms for the

 \_ Signed Dated

**EXHIBIT B**

**CDBG Design, Supply, Deliver and Construct**

**Supplemental General Conditions**

1. REPORTS AND INFORMATION: The Contractor at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as requested 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.

2. CONFLICT OF INTEREST:No member, officer, or employees of the Owner, or its designees or agents, no members of the Owner’s governing body and no other public official of the Owner who exercises any functions or responsibilities with respect to this contract during his/her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in work to be performed in connection with this contract. All Contractors shall incorporate, or cause to be incorporated, in all sub-contracts, a provision prohibiting such interest.

* 1. MINORITY BUSINESS ENTERPRISE:Affirmative steps will be taken to assure that small, minority and female businesses and firms located in labor surplus areas are used when possible as sources of supplies, equipment, construction and services.
	2. If the CONTRACT INCLUDES CONSTRUCTION, the following provisions apply:
* **Davis-Bacon and Related Acts** - Federal Labor Standards Provisions HUD Form 4010 (**See Attachment**)
* **Wage Decision – Davis-Bacon Wage Rates** - Requires workers to receive no less than the prevailing wages as computed by the USDOL and issued in the form of federal wage decisions for each classification of work. The law applies to construction, alteration or repair contracts over $2,000 aggregate. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Part 1, 3, and 5 are herein incorporated by reference in this contract. (**See Attachment)**

5. SECTION 3:If the contractor is also installing materials the contractor will need to comply with 24 CFR Part 75 – Economic Opportunity for Lower Income Persons. Section 3 requires that to the greatest extent feasible the contractor will make available employment opportunities to Section 3 Workers (lower income persons) and subcontracting opportunities to Section 3 Businesses located in the project area. The contractor will need to complete the Steps to Comply with Section 3 form prior to issuance of the notice to proceed and the contractor will need to complete the Section 3 Summary Report format project completion. All subcontractors will also be required to comply with the Section 3 requirements for providing job opportunities and subcontracting.

6. BONDING: All bids in excess of $150,000 shall be accompanied by a guarantee equal to at least five percent (5%) of the bid amount. This guarantee may be in the form of a bond, certified check or other negotiable instrument. Bid bonds will be accompanied by power of attorney bearing the same date as the bond.

If this contract is for an amount in excess of $150,000, the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract.

7. CERTIFICATION OF NONSEGREGATED FACILITIES: For contracts in excess of $10,000, the Contractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained.

8. ACCESS TO RECORDS: The Owner, the federal grantor agency, the Comptroller General of the United States, the Idaho Department of Commerce, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to this specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. All required records must be maintained by the Contractor for four (4) years after Owner makes final payments and all other pending matters are closed.

9. TERMINATION: The Owner may terminate the Agreement (and/or any order issued pursuant to the Agreement) when the Contractor has been provided written notice of default or noncompliance and has failed to cure the default or noncompliance within a reasonable time, not to exceed thirty (30) calendar days, after receipt of such notice. If the Agreement is terminated for default or noncompliance, the Contractor will be responsible for any direct costs and/or damages incurred by the Owner for placement of a new contract. The Owner, upon termination for default or noncompliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

10. CHANGES / MODIFICATIONS: Changes of specifications or modification of this Agreement in any particular can be effected only upon written consent of the Owner, but not until any proposed change or modification has been submitted in writing, signed by the party proposing the said change.

11. CONFORMING GOODS OR SERVICES: The goods or services shall minimally conform in all respects with the specifications or the Owner's solicitation documents. In event of nonconformity, and without limitation upon any other remedy, the Owner shall have no financial obligation in regard to the nonconforming goods or services.

12. OFFICIAL, AGENT AND EMPLOYEES OF THE OWNER NOT PERSONALLY LIABLE: In no event shall any official, officer, employee or agent of the Owner be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation or outside the terms of this Agreement.

13. CONTRACT RELATIONSHIP: It is distinctly and particularly understood and agreed between the parties hereto that the Owner is in no way associated or otherwise connected with the performance of any service under this Agreement on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor. Said Contractor is an independent Contractor in the performance of each and every part of this Agreement, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically owned herein, and for any and all damages in connection with the operation of this Agreement, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, indemnify and hold the Owner harmless from and against and assume full responsibility for payment of all federal, owner and local taxes or contributions imposed or required under unemployment insurance, social security, workman’s compensation and income tax laws with respect to the Contractor or Contractor’s employees engaged in performance under this Agreement. The Contractor will maintain any applicable workman’s compensation insurance and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certification of workman’s compensation insurance may, at the Owner’s option, result in cancellation of this Agreement or in a contract price adjustment to cover the Owner’s cost of providing any necessary workman’s compensation insurance. The Owner does not assume liability as an employer.

14. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE: Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "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 subject to discrimination under any program or activity receiving federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor must include this provision in every sub-contract relating to purchases by the Owner to ensure that sub-contractors and Contractors are bound by this provision.

15. SAVE HARMLESS: Contractor shall indemnify and hold harmless the Owner from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or that arise from the negligent or wrongful acts or omissions of the Contractor, its employees, agents, or sub-contractors under this Agreement that cause death or injury or damage to property or arising out of a failure to comply with any Owner or federal statute, law, regulation or act. IN NO EVENT WILL THE CONTRACTOR BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES. Contractor shall have no indemnification liability under this section for death, injury, or damage arising out of the negligence or misconduct of the Owner.

16. CONTRACTOR RESPONSIBILITY: The Contractor shall be required to assume responsibility for production and delivery of all material and services included in this Agreement, whether or not the Contractor is the manufacturer or producer of such material or services. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of items selected.

17. COMMODITY STATUS: It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the Owner in the specifications. Demonstrators, previously rented, refurbished, or reconditioned items are not considered “new” except as specifically provided in this section. “New” means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer’s new product standards. The items must have the Owner of Idaho as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new item warranty against defects in workmanship and materials. The warranty is to include replacement, repair, and any labor for the period of time required by other specifications or for the standard manufacturer or Contractor warranty, whichever is longer.

18. SHIPPING, DELIVER, INSTALLATION, AND ACCEPTANCE: All orders will be shipped directly to the ordering departments at the location specified, on an F.O.B. Destination freight prepaid basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. “F.O.B. Destination”, unless otherwise specified in the Agreement or solicitation documents, shall mean delivered to the Owner Agency Receiving Dock or Store Door Delivery Point. The Contractor shall deliver all orders as specified and complete installation, if required, within the number of days after receipt of order (A.R.O.) offered, unless otherwise specified in the solicitation documents. Time for delivery commences at the time the order is received by the Contractor. When the purchase price does not include installation, acceptance shall occur fourteen (14) calendar days after delivery, unless the Owner has notified the Contractor in writing that the order does not meet the Owner’s specification requirements or otherwise fails to pass the Contractor’s established test procedures or programs. When installation is included, acceptance shall occur upon completion of installation. If an order is for support or other services, acceptance shall occur fourteen (14) calendar days after completion, unless the Owner has notified the Contractor in writing that the order does not meet the Owner’s requirements or otherwise fails to pass the Contractor’s established test procedures or programs.

19. RISK OF LOSS: Risk of loss and responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Owner except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement. If installation is requested by the Owner or specified in the Owner’s bidding documents, pricing shall include all charges associated with a complete installation at the location specified.

20. GOVERNMENT REGULATIONS: Contractor guarantees that all items meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.

21. PATENTS AND COPYRIGHT INDEMNITY:

a) Contractor shall indemnify and hold the Owner harmless and shall defend at its own expense any action brought against the Owner based upon a claim of infringement of a United States patent, copyright, trade secret, or trademark for items purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the Owner of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and Owner may select at its own expense advisory council; and (iii) that the Owner shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.

b) Contractor shall have no liability to the Owner under any provision of this clause with respect to: any claim of infringement that is based upon (i) the combination or utilization of the item(s) with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications; (ii) the modification by the Owner of the item(s); or (iii) the use of the item(s) not in accordance with Contractor's previously established specifications.

c) Should the item(s) become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States patent, the Owner shall permit the Contractor, at its option and expense, either to procure for the Owner the right to continue using the item(s), to replace or modify the item(s) so that it becomes non-infringing, or to grant the Owner a full refund for the purchase price of the item(s) and accept its return.

22. FORCE MAJEURE: Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the Owner promptly in writing of any cause for delay and the Owner concurs that the delay was beyond the control and without the fault or negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.

23.. Certification Concerning Boycott of Israel. Pursuant to Idaho Code section 67-2346, if payments under the Grant exceed one hundred thousand dollars ($100,000) and Contractor employs ten or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Grant engage in, a boycott of goods or services from Israel or territories under its control.

24. Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Grant be owned or operated by the government of China.