

BUREAU OF RECREATION AND CONSERVATION

Title: Competitive Bidding/Purchasing Policy		
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Approved By: Tom Ford, Bureau Director	Program Area: All	

AUTHORITY

Act 18 of 1995, Section 306, Community Recreation and Heritage Conservation. The Department shall have the power to administer Federal and State programs for grants and loans to local governments, municipal authorities and nonprofit organizations for community and regional projects involving the planning, acquisition, rehabilitation and development of public park, recreation and conservation areas, facilities and programs.

SCOPE

Provides directive for administration of the Community Conservation Partnerships Grant Program

PURPOSE

The Department of Conservation and Natural Resources (DCNR) Grantees are responsible for following the competitive bidding/purchasing requirements that apply to their organization. These vary based on the type of organization. Grantees not familiar with the applicable bidding/purchasing requirements are strongly advised to consult with their solicitor/attorney.

POLICY

Development Projects: Competitive Bidding/Purchasing Procedures

For Parks, Rivers and Trails Development projects, in most cases, Grantees will be required to publicly advertise, bid, and award contracts for construction and the purchase of materials and equipment. The Bureau will require the Grantee to submit proof of compliance with bid requirements.

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

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

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

construct the project (labor, materials, equipment) must be used when determining if the project exceeds the formal bidding threshold.

Partner organizations may not contract labor and/or purchase materials/equipment and then donate the value to the Grantee for the purpose of avoiding competitive bidding/purchasing requirements established by law and outlined in the Bureau *Competitive Bidding/Purchasing Policy*.

On a case-by-case basis, the Bureau may approve in-house, volunteer, or donated labor/equipment use to complete some or all work on the project. If approved by the Bureau, the labor/equipment use may be eligible as a non-cash match for the project. All non-cash match must be pre-approved by the Bureau and comply with the *Development Eligible and Ineligible Grant Project Activities/Costs/Match Policy*.

For Construction, Materials, and Equipment purchase/contracts, the Grantee is expected to accept the lowest qualified quote and/or bid.

A. Municipal Grantees

1. If the Grantee is a political subdivision or other entity for which open and competitive bidding procedures have been established by law, the Grantee must comply with those procedures as applicable to the grant-funded project.
2. If other state and/or federal funds are being used as the match for the DCNR grant and specific competitive bidding procedures are to be followed, please provide those requirements to the Bureau for review.
3. Separations Act: In the preparation of specifications for the erection, construction, and alteration of any public building, separate specifications must be prepared for plumbing, heating, ventilating, and electrical work elements. The Grantee must receive separate bids for each work element and award the contract for the same to the lowest responsible bidder for each work element.
4. In-House, Volunteer, and Donated Labor: Improvements of any kind made or provided by the municipality through its own employees, volunteers, or donated labor may be exempted from bidding requirements. However, all materials used for those improvements that cost in excess of the bidding threshold established by law are subject to the bidding requirements. The total cost to construct the project (labor, materials, equipment) must be used when determining if the project exceeds the formal bidding threshold. Grantees shall not evade provisions of advertising for bids by purchasing materials or contracting for services in a piecemeal manner for the purpose of obtaining prices under the established bidding limits.
5. Professional Design Services Contracts: The Grantee must comply with applicable Municipal Code and local ordinance requirements related to contracting for Professional Services.
6. The Bureau requires the Grantee to submit proof of compliance with bid requirements. The Bureau may require additional written explanation from the Solicitor/Attorney regarding the procurement plan, contract award process, and/or specific purchases to ensure compliance with all applicable laws and policies.

B. Non-Profit, For-Profit, and Organizations Not Covered by Bidding Laws

1. Grantees receiving Grant Awards between \$20,000 - \$100,000:
 - a) Grantees are required to obtain three (3) formal written quotes.
 - b) Quotes must be directly solicited and/or publicly advertised in a newspaper of general publication or a public electronic construction bidding venue.
 - c) For Partnerships Projects, this requirement only applies to development related work elements with grant allocations of \$20,000 - \$100,000.
2. Grantees receiving Grant Awards over \$100,000:
 - a) Grantees are required to use open and competitive purchasing procedures related to the use of public funds for any grants, sub-grants, contracts, subcontracts and/or other agreements for construction, reconstruction, or alteration work and/or purchase of machinery and equipment.
 - b) Bid documents must be prepared and bids must be publicly advertised in a newspaper of general publication or a public electronic construction bidding venue.
 - c) For Partnerships Projects, this requirement only applies to development related work elements with grant allocations over \$100,000.
3. If other state and/or federal funds are being used as the match for the DCNR grant and specific competitive bidding procedures are to be followed, please provide those requirements to the Bureau for review.
4. Separations Act: In the preparation of specifications for the erection, construction, and alteration of any public building, separate specifications must be prepared for plumbing, heating, ventilating, and electrical work elements. The Grantee must receive separate bids for each work element and award the contract for the same to the lowest responsible bidder for each work element.
5. Professional Design Services Contracts: The Grantee must comply with applicable Organization requirements related to contracting for Professional Services. For projects awarded Pennsylvania Recreational Trails Program funding, the Grantee must follow the requirements described in the *Pennsylvania Recreational Trails Project Policy*.
6. The Bureau requires the Grantee to submit proof of compliance with bid requirements. The Bureau may require additional written explanation from the Solicitor/Attorney regarding the procurement plan, contract award process, and/or specific purchases to ensure compliance with all applicable laws and policies.

C. Bonding Requirements

1. Bonding Requirements apply to all DCNR grant-funded projects that are publicly bid.
2. Bid Bond: A Bid Bond (or certified check, bank cashier's check or treasurer's check) is to be provided with the bid proposal to ensure the bidders financial responsibility for the bid.
3. Performance Bond and Labor and Material Payment Bonds: The Public Works Contractors' Bond Law of 1967, as amended, 8 P.S. §§ 191-202, requires that all construction contracts in excess of \$10,000 be accompanied by a Performance Bond and a Labor and Material Payment Bond, unless current municipal codes are more restrictive. Each bond must be in the amount of 100% of the contract award price. These bonds must be secured from an agency or firm approved by the Commonwealth's Department of Insurance to do business in Pennsylvania. These bonds may be

substituted with other acceptable forms of security by Municipal Grantees (Act 171 of 1991, 8 P.S. 193, 1967, P.L. 869 No. 385).

4. **Maintenance Bond:** A Maintenance Bond is required to protect the Grantee from faulty or defective work by the contractor. This bond should cover a period of one year following the completion of the project and should be in an amount of at least 10% of contract price.

D. Prevailing Wage Rates

1. Applicable state or federal wage rates apply to all DCNR grant-funded projects using contracted labor to complete the scope of work.
2. **Pennsylvania State Prevailing Wage Act (PWA):** For state-funded construction projects exceeding \$25,000, except for routine maintenance projects, the PWA requires municipalities pay the prevailing minimum wage to all laborers. The PWA applies to work completed by paid contractors and subcontractors. The PWA does not apply to work performed by Grantee in-house staff, volunteers, material suppliers who do not perform work at the job site, or donated construction services. Prevailing minimum wages are determined by the PA Department of Labor and Industry. Reference to prevailing wages must be made in the notice requesting bids on the project. Potential bidders may request wage reviews by the PA Department of Labor and Industry. Those determinations can, in turn, be appealed to the Prevailing Wage Appeals Board. Those wages become part of the contract and cannot be altered during the contract period. For further information, contact the Bureau of Labor Law Compliance, Pennsylvania Department of Labor & Industry, 1301 Labor & Industry Building, Harrisburg, PA 17120 or (800) 932-0665.
3. **Davis-Bacon Act:** When using federal grant or loan monies for the construction, alteration, or repair of public buildings or public works, municipalities may need to comply with the wage rates and record-keeping procedures established by the Davis-Bacon Act. Those requirements generally apply when the project costs exceed \$2,000. Reference to wage rates must be made in the notice requesting bids on the project. Those wages become part of the contract and cannot be altered during the contract period. For more information about the Davis-Bacon Act, visit the [U.S. Department of Labor](#) website.

E. Cooperative Purchasing Programs

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

Grantees may purchase recreational equipment, materials and ancillary services from Cooperative Purchasing Programs including, but not limited to the PA Department of General Services COSTARS Program, Keystone Purchasing Network (KPN), OMNIA Partners, National Cooperative Purchasing Alliance (NCPA), and PA Correctional Industries (PCI) with the approval their solicitor/attorney and the Bureau.

DCNR bond requirements and the provisions of the PA Prevailing Wage Act and/or the Davis-Bacon Act are applicable to all contracts.

COSTARS Contract 14: Recreational & Fitness Equipment and Services - A Vendor/Contractor may choose to offer ancillary services in conjunction with the products it provides to the Grantee. However, any ancillary services offered must be:

- a) expressly authorized in the original Vendor Contract;
- b) directly related to the delivery, installation or normal use of the product or component parts purchased;
- c) limited to the actual product or component parts purchased;
- d) initiated/ordered at the time of product purchase.

Stand-alone ancillary services and services for products not purchased from the Vendor Contract are not within the scope of this supply Contract. The PA Department of General Services reserves the right to determine which ancillary services shall be included in any contract.

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

F. Other Requirements

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

Planning Projects: Competitive Request for Proposals (RFP) Procedures

For **Planning** projects, the Bureau requires that project consultants are selected using a competitive Request for Proposals (RFP) process. Planning projects may include Comprehensive Recreation, Park, and Open Space Plans; Master Site Development Plans; Greenway Plans; Trail Studies; Feasibility Studies; Conservation and Stewardship Plans; Rivers Conservation Plans; and similar plans. The RFP process, while competitive, is not a formal process required by state law such as the law governing construction work or purchase of materials and equipment. As a more informal process, it can be molded by the Grantee to best meet the project needs.

The RFP alerts consulting firms to the availability of a project. It provides a detailed Project Scope of Work and related requirements so that all firms are competing on the same basis and with the same information. Proposals from more than one consulting firm provide an opportunity to compare different approaches to the work, various cost proposals and the level of expertise of more than one firm. The RFP provides structure to the consultant selection process to ensure that the scope of work, project requirements, and contracting details are understood, and the most cost-effective professional services contract is achieved.

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

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

Once the Grantee has a preliminary selection from the consulting firms who responded to the RFP, the following items must be submitted to the Bureau for review and approval before executing any contracts for professional services:

- a) List of consulting firms that submitted a proposal in response to the RFP and the cost associated with each proposal
- b) Letter identifying the selected consulting firm with a detailed rationale for the selection
- c) Copy of the selected firm's proposal
- d) Draft professional services contract

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

Request for Proposals (RFP) Waiver

Upon written request and at its sole discretion, the Bureau may waive the required RFP process on a case-by-case basis. RFP waivers may be considered for requests that meet the following conditions:

1. Provide a detailed rationale for waiving the RFP process
2. Confirm that the proposed consultant
 - a) is the current municipal consultant appointed via resolution to provide professional services to the Grantee ***and*** has experience completing recreation and conservation planning projects of the type being funded by the DCNR grant; ***or***
 - b) has recent experience completing recreation and conservation planning projects within the study area of the DCNR grant-funded project
3. Confirm that the proposed consultant meets DCNR Consultant Qualifications - general and project-specific qualifications
4. Confirm that the proposed consultant is offering their services for a realistic and competitive cost

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

DISCLAIMER

The policies and procedures outlined in this guidance document are intended to supplement existing requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DCNR to give the rules in these policies that weight or deference. This document establishes the framework within which DCNR will exercise its administrative discretion in the future.

PAGE LENGTH

6 pages

EFFECTIVE DATE

Immediately. This policy is to be reviewed and updated every year.

EXPIRATION

This policy remains in effect until revised or rescinded.

Tom Ford, Bureau Director

12/20/23

Name/Title of Bureau or Office Director

Date