

## CHAPTER 3 -- PROCUREMENT STANDARDS

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## CHAPTER 3

### PROCUREMENT STANDARDS

#### I. OVERVIEW

This chapter provides guidance to grant recipients regarding the State and federal requirements that govern the procurement of supplies, equipment, construction, and professional or other services with CDBG funds. **The principal focus of this chapter is the procedures required for the selection of consultants to provide architectural, engineering, audit, or project management services.**

**The procedures required for the selection of contractors for public facilities or building construction are discussed in detail in Chapter 9, Construction Management: Public Facilities and New Housing Construction.**

Local officials should carefully review this chapter before entering into any agreements to purchase equipment or materials or to retain the services of a consultant or contractor.

#### A. PROCUREMENT STANDARDS

All procurement of supplies, equipment, and professional or other services must conform to procedures set out in the HUD "Administrative Requirements for Grants" [24 CFR, Part 85], and OMB Circular A-110 and appropriate attachments as well as procedures established by Montana law.

There are four basic methods of procurement that may be used by CDBG recipients:

1. Small purchase procedure established by HUD (Housing and Urban Development);
2. Competitive sealed bids (formal advertising for bids). See Chapter 9 for a detailed description of the required procedures;
3. Noncompetitive (sole source) negotiation; and
4. Competitive proposals: Request for Proposals (RFPs) and Request for Qualifications (RFQs)

#### B. REQUIREMENTS

1. All contracts entered into by grantees must contain certain Montana Department of Commerce (MDOC) CDBG-required clauses to assure compliance with all applicable State laws and regulations. This chapter identifies the required clauses.
2. All contracts must be reviewed and approved by MDOC before they are executed.
3. **Prior to contract award**, the names and addresses of all tentatively-selected contractors (whether for construction or professional services such as engineering, architectural design, or grant administration) must be submitted to MDOC for comparison with the General Service Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs.
4. Grantees must retain written documentation regarding the procurement procedures used for each contract.
5. Grantees must establish procedures to assure ongoing review of contractor performance and contract expenditures during the term of any CDBG-funded project.

## II. APPLICABLE REQUIREMENTS

### A. FEDERAL

1. HUD "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally-Recognized Indian Tribal Governments" (24 CFR, Part 85). All CDBG recipients must follow the "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Units" (24 CFR, Part 85). A copy of this document is available upon request from the Montana Department of Commerce (MDOC) CDBG staff.
2. OMB Circular No. A-122 and OMB Circular No. A-110 governs the procurement procedures for private non-profit organizations to use when procuring goods and services. **See Chapter 14.**  
A-110: <http://www.whitehouse.gov/omb/circulars/a110/a110.html>  
A-122: <http://www.whitehouse.gov/omb/circulars/a122/a122.html>

### B. STATE

1. County Contracts Section 7-5-2301 to 2309, MCA, sets out procedures for procurement by county governments.
2. Municipal Contracts and Franchises Section 7-5-4301 to 4308, MCA describe the requirements for the awarding of contracts by Montana cities and towns.
3. Architectural, Engineering, and Land Surveying Services Section 18-8-201 to 212, MCA, establishes a qualifications-based selection procedure for architectural, engineering and surveying services costing \$20,000 or more which are funded by state and local public agencies (state agencies, local governments, school districts, special districts, or authorities of local governments).
4. Montana Public Notice Requirements.

Requirements for publication of notices for municipalities are set forth in Section 7-1-4127, MCA, Publication of notice—content—proof.

Requirements for publication of notices for counties are set forth in Section 7-1-2121, MCA, Publication and content of notice—proof of publication.

Grant recipients should be aware that Section 18-8-203, MCA, dealing with the **procurement of architectural, engineering, and land surveying services**, states that units of state and local government must publish a notice of their need for these services. However, because Section 18-8-203, MCA does not establish a specific time frame or method of publication, it can be read in conjunction with Sections 7-1-4127, MCA, Publication of notice—content—proof (for municipalities); and 7-1-2121, MCA, Publication and content of notice— proof of publication for counties for further guidance regarding publication time frames.

The publication requirements contained in the statutes listed in the chart below apply to the procurement of architectural, engineering, and land surveying services. **In all cases, MDOC strongly recommends that recipients publish their notices in the appropriate regional newspapers, in addition to advertising in local newspapers.** This practice will help assure greater competition, lower costs and provide a better selection of choices for the local government. This helps CDBG grant recipients document outreach to disadvantaged business enterprises.

Summary of Notice Requirements in Montana Statutes				
Statute	Title of Statute	Counties	Municipalities	NOTES
18-8-203, MCA	<i>Public notice of agency requirement</i>	X	X	Sets forth requirements regarding when agencies must publish notice for professional services.
7-1-4127, MCA	<i>Publication of notice</i>		X	Sets forth requirements related to type of media and newspapers acceptable for publication purposes.

5. Rules of Conduct for Public Officials and Employees (Sections 2-2-104 and 2-2-121, MCA). These sections of Montana law set out the Code of Ethics for state and local officials and employees.

### III. GRANTEE RESPONSIBILITIES

The Montana statutes cited above and the HUD "Administrative Requirements for Grants" provides the basic framework of requirements for the procurement of all supplies, equipment, construction, and services using CDBG funds by local governments and any subrecipient. The key requirements are summarized in the following sections. If local officials have any questions regarding these requirements, they should contact MDOC CDBG staff for guidance.

#### A. CODE OF ETHICS

In Title 2, Chapter 2, Part 1, MCA, the Montana Legislature established a Code of Ethics for all officers and employees of State and local government and sets out state policy on conflicts of interest for state and local public officials. (See **Exhibit 3-A**.)

#### B. CONFLICTS OF INTEREST

HUD conflict of interest regulations contained in 24 CFR 85.36 and OMB Circular A-110 apply for all situations involving the procurement of property and services by local units of governments. Under these regulations:

No employee, officer, or agent of the grantee can participate in the selection, or in the award or administration of a contract supported by federal funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent;
2. Any member of his immediate family;
3. His or her partner; or
4. An organization which employs, or is about to employ, any of the persons or entities listed above in 1-3, has a financial or other interest in the firm selected for award.

For any potential conflict of interest situation not covered by the HUD Administrative Requirements, HUD conflict of interest regulations for the CDBG Program apply (24 CFR, Part 570.611). In contrast to the above regulations which apply to procurement by a local government recipient of CDBG funds, the HUD regulations cover situations where a person or contractor would potentially receive CDBG funds, but which does not involve direct procurement by the grant recipient.

These regulations state:

**No persons who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision making process to gain inside information with regard to these activities may obtain a financial interest or benefit from a CDBG assisted action or have an interest in any contract, subcontract or agreement with respect to or from proceeds for either themselves or those with whom they have family or business ties during their tenure or for one year thereafter.**

The complete text of these regulations is reproduced in **Exhibit 3-A.**

Any person who fits this definition usually must be disqualified from receiving benefits under the CDBG Program -- see the box below for comments concerning possible exceptions. This restriction extends to family members and persons with whom the employee has business ties, during the employee's tenure and for one year thereafter. For example, the HUD CDBG conflict of interest regulations would prohibit the rehabilitation of a home owned by the mother of a city council member, and would prevent a public facilities contractor from awarding a subcontract for excavation work to a contractor who is married to a city clerk.

#### **Granting Exceptions for Conflicts of Interest**

**MDOC has authority to grant an exception to these conflict of interest regulations if it determines that such an exception will enhance the effectiveness of the CDBG project and is consistent with the objectives of the CDBG program.**

**Requests for such exceptions must be made in writing to MDOC according to the procedures outlined in Exhibit 3-A. Exhibit 3-A.7 is a sample public notice that may be used to publicize a public hearing on a potential conflict of interest situation.**

Montana's Code of Ethics for public officials and employees (cited above in section A) includes similar conflict of interest regulations that also apply to procurement activities for any local CDBG project. In some circumstances, the State of Montana conflict of interest provisions may be even more restrictive than the federal prohibitions. Sections 2-2-201 and 7-3-4367, MCA, **prohibit any municipal or county employee from entering into a contract** with his or her employer.

#### **Combining Engineering and Grant Administration Services**

**A frequently-asked question regarding "conflict of interest" is whether the same firm may be selected to provide both engineering services and grant administration services.** According to HUD policy, a conflict generally exists in situations where a local government awards a contract to a firm to manage or administer its CDBG project while at the same time the firm is to provide a service or product under the community's CDBG project.

HUD regulations require that a grantee's financial management system provide for effective control over and accountability for all funds. **The regulations prohibit arrangements where a firm would, in effect, be reviewing its own work. Under no circumstances would it be appropriate to have an engineering consultant directly involved in managing CDBG funds for the project or placed in a position which they would in effect, be signing off for their own work.**

**MDOC** recognizes that some CDBG recipients or sub-recipients may not have staff available to manage a CDBG project, and they may be situated in a location too remote to be reasonably served by a qualified administrative consultant. Consideration should be given to the engineer's existing workload. If the firm or the particular project engineer is too busy to handle the details of grant administration, it may be better to contract with a qualified resident of the community to serve as project manager. **The ultimate decision on whether project management and engineering services should be provided by a single consultant rests with the grantee, in consultation with the assigned MDOC CDBG Program Specialist.**

### C. GENERAL PROCUREMENT POLICIES

Under the HUD "Administrative Requirements for Grants", CDBG recipients are:

- required to review proposed procurements to avoid purchase of unnecessary or duplicate items;
- required to consider consolidating or breaking out procurement to obtain a more economical purchase;
- required to analyze the alternatives of lease versus purchase, where appropriate, and perform any other appropriate analysis in order to determine the most economical procurement approach;
- encouraged to enter into state and local inter-governmental agreements for procurement or use of common goods and services to achieve greater economy and efficiency, where feasible;
- encouraged to use federal and state excess and surplus property in lieu of purchasing new equipment and property whenever it is feasible and reduces project costs;
- required to make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources;
- required to maintain records sufficient to detail the significant history of a procurement. These records must include, but are not necessarily limited to, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price;
- permitted to use "time and material" type contracts only in very limited situations:
  - a. after a determination is made that no other contract is suitable; and

- b. if the contract includes a ceiling price that the contractor exceeds at his/her own risk.
- responsible for, in accordance with good administrative practice and sound business judgment, the settlement of all contractual and administrative issues arising out of procurement activities; and
- required to have protest procedures to handle and resolve disputes relating to procurement, and in all instances disclose information regarding the protest to the Montana Department of Commerce.

#### **D. CONTRACTING WITH DISADVANTAGED BUSINESS ENTERPRISES**

**Disadvantaged Business Enterprises (DBEs)**, is a term used to collectively refer to both women-owned business enterprises, and minority-owned business enterprises. CDBG grantees are required to take affirmative steps to assure that DBEs are utilized when possible, as sources of supplies, equipment, construction and professional and other services.

Grantees should encourage the prime contractors on their projects to utilize qualified DBE firms to the maximum extent possible. **Please see Chapter 5, III. Grantee's Responsibilities, C. Contractor Affirmative Action for full description of requirements.**

#### **E. PROCUREMENT PROCEDURES**

##### **1. Full and Open Competition**

**All procurement transactions should be conducted in a manner that provides full and open competition. Procurement procedures should avoid any provisions that would restrict or eliminate competition.**

Some of the situations considered to be restrictive of competition include:

- placing unreasonable requirements on firms in order for them to qualify to do business;
- requiring unnecessary or unreasonable levels of prior experience and excessive bonding;
- non-competitive pricing practices between firms or between affiliated companies;
- non-competitive awards to consultants that are on retainer contracts;
- organizational conflicts of interest;
- specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and
- any arbitrary action in the procurement process.

2. **Geographic Preference**

As a federally funded program, CDBG recipients should conduct procurement in a manner that avoids the use of administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals. Including criteria in a request for proposals such as "knowledge of community" or "experience with community" would be considered to "unduly restrict competition" and are discouraged.

3. **Written Selection Procedures**

CDBG recipients should have written selection procedures that provide, at a minimum, that all solicitations:

- a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. **The description should not contain features that unduly restrict competition.** The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, describe those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors or must be clearly stated.

- b. Identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**F. SELECTING THE METHOD OF PROCUREMENT**

The HUD "Administrative Requirements for Grants" permits four alternative procurement methods. CDBG recipients should select the most appropriate method based upon the recipient's needs and the nature of the services required. The following is a summary of four basic selection alternatives and the requirements associated with them. If local officials have any questions regarding these requirements, they should consult the MDOC CDBG staff assigned as liaison for their project. MDOC's current procurement policy is as follows:

1. **Procurement of Grant Management Services:**

In 1998, MDOC adopted a policy that grant administration services (consulting services) for CDBG, HOME (excluding Community Housing Development Organizations) and TSEP grants are procured using the following procedures:

- a. **Requests for Proposals (RFPs) are:**

- required for any services over \$100,000;and
- recommended for procurement actions under \$100,000 that are complex and/or where qualifications and desired work products cannot easily be handled by telephone rate quotations.

Additional guidelines on the use of RFPs for HUD funded projects can be found in HUD Notice CPD-96-05, available from MDOC. (An example of an RFP for grant management services is found in **Exhibit 3-B.**)

- b. **HUD's Small Purchase Procedures** can be used where the procurement will not cost more than \$100,000 in the aggregate. (See item 3. Procurement by HUD's Small Purchase Procedures, below).
- c. If a local government's procurement policy is more restrictive than MDOC procedures, the local government's policy will govern the procurement procedures to be followed.

**PROCUREMENT OF GRANT MANAGEMENT SERVICES:**  
**A quick summary of MDOC's procurement policy**  
**concerning grant management services:**

- Grant management services must be procured by a RFP if the service will cost more than \$100,000.
- If the service for grant management will cost less than \$100,000 ("small purchase" procurement), it is not necessary to follow a formal RFP procurement process; however, local governments should still prepare a brief description of work to be performed, outlining the professional services they are seeking and distribute it to all interested firms. (This preparation would need to be completed for the professional services contract in any case.)
- Firms would then be invited to submit responses. Interviews could be conducted for the top-ranked firms or candidates either by telephone or in person. In any event, at least three individuals or firms should be contacted as evidence of competition with complete written records maintained at the local level documenting how individual firm's responses were evaluated and ranked. Although at least three firms must be contacted, it is not necessary to receive three or more responses back (recognizing that sometimes firms choose not to respond to a solicitation.)

2. **Procurement of Architectural, Engineering, or Surveying services -- Use the Request for Qualifications (RFQ) Process**

Under Montana law (18-8-201, MCA), the selection of a consultant for architectural, engineering, or surveying services requires a **competitive solicitation and negotiation process** (usually called the Request for Qualifications process, RFQ) for projects for which the fees are estimated to exceed \$20,000.

For other professional services, such as legal, appraisal, or audit services, the MDOC recommends following a competitive solicitation and negotiation process using requests for proposals if the cost of the service may exceed \$10,000. For professional services estimated to cost \$10,000 or less, CDBG recipients may select the service provider through a process of directly soliciting proposals and price quotes from and negotiating with individual firms, as long as adequate written documentation of solicitation from more than one source is provided.

3. **Procurement by HUD's Small Purchase Procedures:**

HUD's "Small Purchase Procedures" can be used where the procurement will not cost more than \$100,000 in the aggregate, and where the procurement is relatively simple and a selection decision can be made based on three to five rate and work plan quotations from qualified sources. (According to MCA 7-5-4302 advertisement is required for equipment purchases over \$50,000. See item "e" below.)

As you procure services using HUD's Small Purchase Procedures, keep in mind:

- a. The Grantee needs to record the rate or quote received along with other identifying information (name, address, and phone) and document the questions asked. If the selection is made using small purchase procedures, the grantee should also contact the Montana Department of Transportation (MDT) to obtain a list of Disadvantaged Business Enterprises (DBEs) certified firms within the region that appear in MDT's directory in order to invite proposals from qualified DBE firms.

**Please contact:**

**Montana Department of Transportation (MDT)**  
**2701 Prospect Ave.**  
**PO Box 201001**  
**Helena, MT 59620-1001**

**Phone: 406-444-6337**

**DBE Website:**

<http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

- b. For their own protection, the CDBG Program recommends that local governments follow prudent purchasing practices and receive competitive telephone or written quotations for all small purchase procurement. According to MCA 7-5-4302 advertisement is required for equipment purchases over \$50,000. (See item "e" below.)

Because of the public "visibility" of most community development projects, maintaining a high level of public confidence regarding the expenditure of all public funds is vital, even for the purchase of seemingly small items or services.

Fax quotations are an acceptable form of written documentation. **In all cases, the local government should obtain price or rate quotations from a minimum of two qualified sources.**

- c. When price quotations are obtained orally, adequate written documentation, such as detailed notes describing telephone contacts (who, what, when, etc.), must be maintained in all local CDBG files.
- d. If the local government small purchase procedures are more restrictive than those described above, the local government procedures must be used.
- e. According to MCA 7-5-4302 advertisement is required for equipment purchases over \$50,000 (<http://data.opi.state.mt.us/bills/mca/7/5/7-5-4302.htm>). MCA 7-5-4302 states:

Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303 or 7-5-4310, or Title 18, chapter 2, part 5, a contract for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies or for construction, repair, or maintenance in excess of \$50,000 must be let to the lowest responsible bidder after advertisement for bids. (2) The advertisement must be published as provided in 7-1-4127, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

4. **Procurement by Competitive Sealed Bid (after formal advertising)**

Competitive sealed bidding is the standard procurement process followed for construction activities involved in CDBG public facility and new housing construction projects.

**Chapter 9 (Construction Management: Public Facilities and New Housing) includes a detailed step-by-step discussion of the procedures involved in selecting a construction contractor and the requirements that are applicable to CDBG-funded construction contracts.** Grantees should also refer to the current applicable provisions of Montana law for advertising requirements (Section 7-5-2301, MCA, for county governments and Section 7-5-4302, MCA, for municipalities) when the competitive sealed bid method is used.

Procurement by competitive sealed bids (after formal advertising) is used when the following conditions exist:

- a. A complete, adequate and realistic specification or purchase description is available;
- b. Two or more responsible suppliers are willing and able to compete effectively for the business;
- c. The procurement lends itself to a firm fixed-price contract (a specified price to be paid when the items or services are delivered); and
- d. Selection of the successful bidder can appropriately be made principally on the basis of price.

Bids are publicly solicited (advertised in newspapers) and kept in confidence until there is a public bid opening. A firm-fixed price contract is awarded to the responsible bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. When using formal advertising, the following requirements apply:

1. The invitation for the bids must be publicly advertised and bids must be solicited from an adequate number of known suppliers or contractors, providing them sufficient time prior to the date set for opening the bids.
2. The invitation for bids, including specifications and attachments, must clearly describe the items or services required in order for the bidders to properly respond.
3. All bids must be opened publicly at the time and place stated in the invitation for bids.
4. A firm-fixed price contract award must be made in writing to the lowest responsive and responsible bidder.
5. Any or all bids may be rejected if there is a sound documented reason.

5. **Sole Source Procurement (Requires Prior CDBG Approval)**

**Sole source procurement (also known as “procurement by noncompetitive proposals”) is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate.** The only circumstances under which a contract funded with CDBG monies may be awarded by sole source procurement negotiation are when at least one of the following applies:

- a. sole source procurement would be permissible under Montana law; and
- b. the items or services required are available only from one source;
- c. a public emergency exists such that the urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods described above; or
- d. after solicitation from a number of sources, competition is determined to be inadequate.

Housing and Urban Development procurement requirements (24 CFR Part 85.36 - Procurement, <http://www.hud.gov/offices/cpo/grantees/cfr8536.cfm>) make clear that sole source procurement is permissible only when at least one of the above conditions applies and procurement by other procedures is not feasible. CDBG recipients proposing sole source procurement must provide cost data to demonstrate that proposed costs are reasonable and appropriate.

An example of a situation where MDOC would approve a sole source procurement would be where an engineering firm has been selected for a prior phase of a federally-funded public facility project and where CDBG funds will be used to complete a pre-existing and continuing project. **In such cases, the original procurement of the engineering services must have been done in compliance with the procurement regulations of the federal funding agency involved.**

The fact that a contractor is currently performing other consultant services for the CDBG grant recipient is not an adequate justification alone for a noncompetitive negotiated contract award. **In all cases, noncompetitive negotiation which would involve CDBG funds must have prior approval from MDOC.**

6. **Procurement by Competitive Proposals**

-- **“Procurement by RFP” (Requests for Proposals)  
or “Procurement by RFQ” (Request for Qualifications)**

The phrase "procurement by competitive proposals" is often used interchangeably with the term “Procurement by RFP” (Requests for Proposals), but there is also a method called “Procurement by RFQ” (Request for Qualifications).

These methods of procurement are generally used when conditions are not appropriate for the use of sealed bids. An RFQ/RFP is a written announcement that invites consultants to compete for the provision of services to your local government.

**Procurement by competitive proposals via the RFQ method is the procurement procedure required by Montana law (Section 18-8-212, MCA) for retaining professional services such as an architect, surveyor, or engineer for your CDBG project where the cost of the service will likely exceed \$20,000.** The law applies to state agencies, local governments, special districts, "or any other entity or authority of local government, in corporate form or otherwise." It therefore applies to all procurement of these professional services by CDBG recipients. (A sample of an RFQ for engineering services is found in **Exhibit 3-C.**)

Grant recipients should be aware that section 18-8-203, MCA, dealing with the procurement of **architectural, engineering, and land surveying services**, states that **units of state and local government must publish a notice of their need for these services.**

Because the retention of consultant services for engineering or project management is a major concern for most CDBG recipients during the start-up phase of their project, the following discussion will cover the issues involved in this method of procurement in greater detail.

**Generally accepted guidelines for procurement by competitive proposals include:**

- Requests for Qualifications (RFQs) are publicized which identify all evaluation factors and their relative importance.
- Any response to publicized requests for proposals is honored to the maximum extent practical.
- Proposals must be requested from an adequate number of qualified sources.
- CDBG recipients must have a method for conducting technical evaluations of the proposals received and for selecting awardees.

- All proposals received should be evaluated according to written criteria established in advance which describe the significant factors to be used to determine the contract award.
- The contract award is made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

## G. PREPARING A REQUEST FOR QUALIFICATIONS OR REQUEST FOR PROPOSALS

Although the RFQ/RFP process may appear time-consuming, taking the time up front to make sure that your community hires a competent engineer or architect or other consultant will, in the long term, likely save money and prevent problems. The RFQ/RFP should include:

- the name of the local government issuing the RFQ/RFP;
- a brief description of the project including location, purpose, time frame, and present status;
- a general description of the scope of the services to be provided by the consultant;
- the amount budgeted for the proposed scope of services;
- the method of payment to be used;
- the time frame for performing the work, including any major milestones or deadlines involved;
- information required of each respondent in order to make the selection, including consultant qualifications, related experience on similar projects, current and projected workloads, capability to meet time and budget requirements, and identity of and qualifications of professional personnel to be assigned to the project;
- the methods and criteria to be used in evaluating the proposals, and the relative weight of each of the criteria;
- the name and telephone number of a local person who can be contacted for further information regarding the RFQ/RFP; and
- directions for submitting a response to the RFQ/RFP.

**The entire project scope should be included in the RFQ/RFP. For instance, engineering services for the planning, design and construction phases of the project should be specifically listed in the RFQ/RFP and be addressed by the responding firms.** You can always change engineering firms, but if you hire them to do the facility plan (planning phase) only, and later want to use the same firm for the design, you would need to go through this same procurement process again.

You should not go into precise detail about the scope of the services the consultant is expected to perform. You should be telling them what you want done, not precisely how to do it. You do not want the response to be just a repeat of your RFQ/RFP. Allow the consultants to demonstrate their knowledge and experience by filling in the details of how they would approach the problem and the alternatives that you should consider.

The RFQ should be concise and to the point, containing all the important information needed for the firms to respond in a factual manner. However, do not overdo the RFQ/RFP document; include only the necessary information. A wordy or unclear RFQ/RFP will unnecessarily increase the time each firm spends preparing their response and your time in reviewing the proposals.

You should, however, be sure to specify any services or equipment the consultant will be expected to provide, such as requiring that they open a local office or provide secretarial or financial management services. These can significantly affect how the consultant will budget his or her time and resources. The RFQ/RFP should also describe any unique problems involved in the project and any previous studies that would be available for their review.

CDBG recipients may want to consider including the amount budgeted for architectural, engineering, or grant administration services in the RFQ/RFP.

This may help a consultant decide whether to go to the effort of responding. Knowledge of the available budget will also help the consultant fit the proposal to your financial resources to make sure that time and resources are used most efficiently.

Your RFQ/RFP should not only describe the criteria to be used in evaluating the proposals but also the relative weight attached to each. This is important for the consultant to better understand the priorities of your concerns and how to respond to them.

The directions for submitting the RFQ/RFP should specify the date and time of the submittal deadline and the number of copies required. Since proposals are sometimes hand delivered, be sure to include an office address where someone will be available to accept them.

Your RFQ/RFP document should also include the names, telephone and fax numbers, and Internet addresses (if available) of people that will be available and knowledgeable enough to answer questions about the RFQ/RFP. Do not just list the chief elected official if that person is not likely to be available during normal business hours.

Consultants interested in responding will usually contact you before they decide to submit a proposal. MDOC recommends that you be frank in answering the consultant's questions.

Consultants should be allowed to review your CDBG application so that they can gain a better understanding of what your community hopes to accomplish through the project. MDOC retains extra copies of funded applications for review by the public or consultants.

**Exhibit 3-B and Exhibit 3-C are *sample* formats for an RFP for grant management services and an RFQ for engineering services.** Both provide only the outline for the content of an RFP/RFQ; each must be carefully adapted to reflect the unique activities and considerations involved in your CDBG project.

## H. SOLICITING PROPOSALS

CDBG recipients should be able to document that proposals were solicited from an adequate number of qualified sources and that full and open competition took place prior to its selection of a consultant. Encouraging adequate competition is of obvious interest and benefit to CDBG recipients in terms of retaining the most qualified consultant at a reasonable cost. The more responses, the better the community's chance of hiring the best qualified firm.

At a minimum, the local government should advertise the RFP or RFQ at least once in the newspaper used for its regular legal advertising. For the procurement of architectural, engineering, and land surveying services, recipients should refer to the Montana Public Notice Requirements discussed at the beginning of this chapter.

MDOC's concern in reviewing local procurement procedures is that the CDBG recipient be able to demonstrate reasonable efforts to solicit from an adequate number of qualified sources. If the RFP/RFQ is advertised in a small town newspaper with only local distribution, the effort may be open to question. **Therefore, MDOC strongly recommends that grantees also advertise at least once in a newspaper with regional distribution in their area of the State, in addition to local advertising.**

**Advertising the local government's request for proposals does not mean that the entire text of the RFP/RFQ must be included in a legal advertisement.** The advertisement can briefly announce that the community is requesting proposals and that a copy of the detailed RFP/RFQ is available upon request. (See the example in **Exhibit 3-D**.) This approach, in lieu of publishing the entire text of the RFP/RFQ, could substantially reduce advertising costs. However, it will mean that the grant recipient must allow additional time for persons or firms to request and receive a copy of the RFP/RFQ and to respond.

You should send copies of the RFP/RFQ to firms that have previously indicated an interest in submitting a proposal. You can also contact other firms directly and ask them to submit proposals. By retaining copies of the letters sent to these firms, you will have clear documentation of your efforts to invite competitive proposals in the event that you receive a limited number of responses.

**You should allow at least four weeks for responses to your RFP/RFQ.** MDOC considers three weeks the very minimum to allow for a reasonable time for a firm to prepare an adequate response. Less time for response would unnecessarily restrict competition. Most firms are already busy with ongoing work activities. If time is too limited, some very qualified potential respondents may either be eliminated or may not be allowed sufficient time to prepare a quality proposal.

## I. PRIOR COMMITMENTS TO CONSULTANTS

**A CDBG grantee may have contracted with a consultant, architect, or engineer to prepare the original CDBG application.**

**This contract cannot be renewed or extended without further competition unless it can be clearly documented that the original hiring process met all federal and state requirements and included a scope of services that could extend beyond grant writing at the grantee's discretion. Professional services provided for a longer period than originally procured must be re-advertised.**

The original consultant may respond to the grantee's new RFP/RFQ, and it is perfectly legitimate to consider that consultant's prior performance when making the selection. The RFP/RFQ process does not preclude you from hiring an engineer that has previously worked for you and who performed well. It does mean that you must give other qualified firms a reasonable opportunity to make a proposal a project.

A community may receive a proposal for what is called a "loss leader" arrangement, where the consultant offers to prepare or assist with a grant application at cut rates or for no cost in return for favorable consideration in the selection process for a project manager, architect or engineer. No such arrangement, whether based on an oral or written agreement, can be valid or binding on the grantee since it clearly violates federal requirements mandating "full and open competition."

Also, using an evaluation criterion such as "*familiarity with project or community*", for example, would be considered to be *restricting competition* because it would favor a consultant or firm that had worked with the community previously and could possibly discourage competition by other consultants.

## **J. REVIEWING PROPOSALS AND SELECTING THE CONSULTANT**

The local government should appoint a committee of three to five people to review the responses to the RFP/RFQ. Members of the committee should be familiar with the RFP/RFQ and work to be accomplished through the contract. Try to include a person who is very familiar with the problems of the public facility or with the new housing construction project, such as the local public works supervisor or a local housing construction expert.

It may also be helpful to have a member of the committee with technical knowledge or experience appropriate to the project. The committee should try to keep to a minimum the time between the proposal deadline, evaluation of the proposals, and the final selection of the consultant. Forty-five days is a reasonable time period.

Grantees should have a method for conducting technical evaluations of the proposals received and for selecting awardees. Grant recipients rank the proposals according to the evaluation factors listed in their RFP/RFQ and assign points to each, based on a pre-established number of points for each evaluation criterion which is consistent with their relative importance as described in the RFP/RFQ. Under State law, the ranking criteria for selection of engineers, architects and surveyors must include, at a minimum:

- the qualifications of the professional personnel to be assigned to the project;
- the consultant's capability to meet time and project budget requirements;
- location;
- present and projected workloads;
- related experience on similar projects; and
- recent and current work for the entity issuing the RFP/RFQ.

An example of possible selection criteria, and a sample evaluation form, which incorporates the required ranking criteria is included in **Exhibit 3-E** (Selection Criteria for Evaluating Consultant Proposals).

An effective way to handle the ranking of the responses to your RFP/RFQ is to put together a matrix with your evaluation criteria on one side of a sheet of paper and the names of the consultants responding on the top. Each criterion is assigned a point value. Each proposal is reviewed, scored, and point scores added up. The scores you finally assign to the respondents should be retained as part of your record of the rationale you used to select the consultant. The matrix can be used twice: 1) once to

screen the written proposals to select respondents to be interviewed and 2) again to record the ranking of those chosen for an interview.

In making your selection, you should remember to distinguish between the overall firm and the person(s) that will actually be assigned to your project. Be sure to carefully consider the qualifications of the person the firm intends to assign to your project. The fact that a firm has an excellent reputation overall does not guarantee the competence of the person who will be assigned to work with you.

It is not necessary to interview a large number of consultants to demonstrate adequate competition. Responding to an RFP/RFQ can involve a significant amount of time and expense for consulting firms. It would be unfair to ask a consultant to also take the time and to incur travel expenses if they are unlikely to be selected. If you receive a large number of responses, try to limit the number of consultants to be personally interviewed to the top-scored three best (five should be the maximum), based on their written proposals.

If you have determined that some proposals are weaker than others, these should be eliminated from consideration. At a minimum, however, local officials should interview more than one of the firms or persons that submitted responses before making a selection, in order to demonstrate that adequate competition took place. Do not pre-select a qualified firm and then invite others to interview so that an appearance of competition is increased. Good, qualified firms may not respond to your RFP/RFQ the next time you solicit proposals for a community project.

The review committee should interview the finalists separately. Do not allow other firms to sit in on or hear any firm's presentation. The consultants should describe their qualifications, the manner in which they would handle the work tasks, and respond to any questions regarding the content of their proposals. The individual who will be principally responsible for doing the work on your project day-to-day should be present at the interview. Allow adequate time for formal presentations and questions from the committee. An hour is considered a reasonable minimum by the Montana Technical Council.

Standard questions should be asked during the interview to allow comparison of the responses. Ask the same questions of each firm. Provide each person on the selection committee a sheet listing the questions to be asked during the interview. Each member of the selection committee should note the consultant's answer to each question, and should rate the answer using a predetermined scoring method.

After ranking the responses in order of their scores on the evaluation factors and checking references, the committee will make their recommendation. Once it has reached a final decision, the local government should notify all of the respondents of the results in writing, as soon as possible.

## **K. CHECKING REFERENCES**

**Before you make your final selection of a consultant, there is no step that is more important than to thoroughly check references.** Always request a list of prior clients, including their name, description of the work performed, addresses, and the name and phone number of a person to contact. A list of their most recent projects is usually best. You should contact several references for each respondent being considered. Some useful questions might be:

- Were you satisfied with the quality and timeliness of the work?
- Was the consultant knowledgeable about funding programs and related requirements?
- Was the consultant willing and able to work closely and effectively with local staff?

- Were the costs or charges reasonable in relation to the work actually performed?
- Did you experience any problems that would discourage you from hiring them again?

Also check to see if the work done for these clients is similar to what you want the consultant to do. The ability to write a grant application, for example, does not mean that the same consultant has the capability to assist you with the management of a grant.

Sometimes the person or firm you are interested in will be a new firm with few, if any, client references. New, small firms can sometimes be just as good as well-established, large firms, so instead of asking for client references, you would ask for employer references.

**Checking references prior to selecting a consultant is the most important action you can take to avoid becoming involved with an unsatisfactory consultant.** MDOC's CDBG staff may also be able to help you identify references for the finalists you are considering. The staff is familiar with several firms and may be able to refer you to other communities that have knowledge of the consultants you are considering.

#### **L. MDOC DEBARMENT / ELIGIBILITY CHECK OF CONTRACTORS AND REVIEW OF PROCUREMENT PROCEDURES USED**

The name of the firm, principals of the firm, and address of the firm or consultant that has tentatively been selected must be provided to the CDBG Program Specialist assigned to your project – who will conduct a Federal and State debarment check of the firm and its principals. Once the check has been completed, the specialist will notify the grantee of the firm's status.

- ✓ **This debarment check must be completed prior to issuance of a contract award; therefore, this debarment check should take place before local officials spend substantial time negotiating with a firm that has tentatively been selected.**
- ✓ **Before the community enters into a contract**, local officials **must** send their assigned CDBG Program Specialist a copy of the advertisement used to publicize the RFP/RFQ, a copy of the RFP/RFQ itself, and a summary of the procedures followed to select the consultant, including copies of the evaluation forms used to compare the responses. MDOC can then review the procurement practices used by the CDBG recipient to assure that they are in compliance with federal and state requirements.
- ✓ **CDBG recipients must retain all documentation in their CDBG project files to demonstrate the basis for selection or rejection of consultants, consultant qualifications, contract specifications, and scope of work.**

Federal regulations prohibit grantees and sub-recipients from making any contract award or permit any contract award to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs ( Executive Order 12549 ).

The System for Award Management (or SAM, website: <https://www.sam.gov/portal/public/SAM/>) consolidates the debarment lists used by individual federal agencies. Use of the list is required for all HUD-funded programs.

It is also a state requirement to check for debarments through the listing of the State of Montana Debarred Vendors. The state requires that agencies may not enter into contracts with these vendors until the debarment period has expired. (See Section 18-4-241, MCA and ARM 2.5.402.) In addition, participants in contracts associated with a CDBG project must certify that neither they nor their principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, voluntarily excluded, or otherwise ineligible.

When a grant recipient receives only one response to a competitive solicitation, the procurement process may be reviewed by **MDOC** to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the local government to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of unnecessarily restricting competition.

## M. CONTRACT PRICING AND METHOD OF COMPENSATION

A **response to an RFP/RFQ** should not be confused with a **competitive bid**.

- A **bid** is an estimate of cost in response to detailed specifications such as for construction projects where selection can be made principally on the basis of price.
- A **response to an RFP/RFQ** is a description of how a consultant proposes to approach solving your problem.

Communities should not choose an engineer or architect only on the basis of cost. The main focus in selecting the consultant is to evaluate the quality of the proposal and the consultant's "demonstrated competence and qualifications for the type of professional services required."

**In an RFP process, competition is primarily on the basis of qualifications, not on the basis of cost.**

**Specific costs should be discussed only after the consultant has been selected.** It is well worth spending a little extra to get a qualified engineer or architect who will design a sound project that will provide cost-effective service for years to come.

Once the local government has made the final selection of a consultant, the next step is to negotiate the terms for compensation for the consultant's services at a "fair and reasonable" cost. Montana's law in regard to selection of architects, engineers, and surveyors, requires the local government to "negotiate a contract with the most qualified firm . . . at a price which the agency determines to be fair and reasonable."

The community needs to have a good sense of what a reasonable rate for a service is. Local officials can consult the professional engineering and architectural associations -- such as the **Consulting Engineers Council of Montana** (629 Ave. D, Billings, MT 59101; telephone: 259-7300) or the **AIA Montana/American Institute of Architects** (P.O. Box 20996, Billings, MT 59104; telephone: 259 7300) -- to determine what "fair and reasonable" rates would be.

For other types of consulting services, local officials can also consider comparative prices in the area for similar services. Ask the consultant to briefly explain the firm's estimated fee and basis of charges or billing. Make sure you understand exactly what services will be provided. Is there a distinction between basic services and additional services? What circumstances could significantly change the estimate?

If the local government and the selected respondent cannot come to agreement on the scope of services and a mutually satisfactory fee, local officials should formally terminate the negotiations in writing and repeat the process of negotiating a scope of services and negotiating terms with the second-ranked respondent.

Once an overall price is negotiated that is fair and equitable to both parties, grantees should negotiate payment terms. Most consultants will prefer to receive payments in installments during the term of the project, rather than in one lump sum at the end of work activities.

Whenever possible, the grant recipient should assure that reimbursement is on the basis of the accomplishment of measurable objectives, such as key tasks or milestones in the scope of services or implementation schedule rather than an incremental time-payment basis in order to give the local government adequate control over contractor performance.

### **Cost Reimbursable Contracts and Specified Ceiling**

**In order to be eligible for CDBG reimbursement, contractors will be required to submit itemized invoices describing services furnished, total hours worked to accomplish each item, amount being billed for each item, a description of any other eligible reimbursable expenses incurred during the billing period, and total amount being billed. In addition, a narrative description in sufficient detail must be submitted to justify the amount claimed on invoices. (See Exhibit 3-J).**

MDOC will require itemized billing for professional services in order to provide adequate documentation of services rendered for projects using public funding. The CDBG program has authority to grant exceptions to this requirement.

For many years, MDOC policy for CDBG project administration allowed "fixed price contracts" for consulting services. In recent years, both local officials and staff from other state and federal funding programs have expressed concern about the use of fixed price contracts for professional services because of the lack of accountability and cost control this method provides, particularly when a project includes multiple federal and state funding sources. The reality is that the true costs for completing work tasks associated with the management of community projects are highly variable, depending upon the type of project and the unique issues that are involved.

**Cost reimbursable contracts with a specified ceiling for compensation (as described above) are required by MDOC as the basis for project management contracts since the amount of funding available for administration is usually limited by the budget submitted in the community's original grant application.**

Compensation for management services and architectural and engineering services must be on an **hourly basis, not to exceed a specified amount, for each work element to be performed** under the contract's scope of services.

The **"costs plus a percentage of costs" system** of compensation is **prohibited** by federal law. Similarly, **"percentage of construction costs" methods (contingent fees)** are **usually prohibited** for any publicly funded contract.

### **Use of Retainages**

**In negotiating payment terms for management services contracts, communities can provide for a retainage or holdback of a percentage of the contract funds (typically about five percent) pending completion of conditional project closeout and the resolution of any monitoring findings which may be related to the consultant's performance.** The retainage concept might also

be applied to an architectural contract by retaining some CDBG funds until a building constructed with CDBG funds has been inspected and approved for building code compliance.

For public facilities, the final payment of the engineering fee could be retained until the "as built" construction drawings have been submitted to the Department of Environmental Quality and, if applicable, an operation and maintenance manual has been provided to the grantee.

See **Exhibit 3-I** and Chapter 9 for additional guidance on retainages.

## N. PREPARING THE CONTRACT

The grant recipient's negotiation with the selected consultant will include the scope of services, timetable, contract cost, and payment terms. In most cases, the consultant will prepare a draft scope of services based on the proposal submitted in response to the RFP. This draft scope of services should include detailed descriptions of the services and products to be provided, along with a work schedule indicating the time line for completion of the more significant tasks, services and products that will be provided.

Grant recipients negotiating scopes of services for project management can review the sample management plans in **Exhibit 1-B** and **Exhibit 1-C** to get an idea of the activities that can be included in a scope of services.

### Put It in Writing

**The community should insist that any "understanding" between the consultant and the local government be written into the contract.** "Gentlemen's agreements" can cause problems, even when involving apparently minor issues. The more time that is spent on describing who will be doing what, when, and for what fee, the smoother relations will be later on.

Several points that should be clarified in the contract to protect the community's interests are:

1. State that only those key individuals who are identified in the firm's proposal for specific tasks are permitted to charge their time and expenses to the job. This should not apply to clerical and support staff whose costs were not specified in the consultant's original proposal.
2. All commitments stated in the contract must be honored unless changes are approved in writing.
3. It is important that the contract allow a fair and reasonable profit for the consultant. The basis for this could be previous experience, contacts with other municipalities, or published professional guidelines.

Preparation of the contract itself is relatively simple once these issues have been agreed upon. MDOC has prepared a *sample* professional services agreement which includes the standard "boilerplate" language used in such contracts and the clauses required for CDBG-funded contracts (**Exhibit 3-F**). This *sample* is a stand-alone contract and includes all CDBG required clauses. It is the grantee's responsibility to include provisions related to all applicable CDBG requirements in any contract or agreement through which CDBG funds are passed on to a contractor or subcontractor.

**Exhibit 3-G** shows the CDBG required supplemental conditions to be included in an architect's, engineer's, or grant administrator's standard contract for professional services -- if they prefer to use

their existing contract format. In both sample formats, the required clauses have been noted with an asterisk. These required clauses cover issues such as procedures dealing with breach of contract and termination, patents and copyrights, and access to and retention of records.

**Exhibit 3-H** is a checklist of required clauses for professional services contracts.

The grant recipient's attorney should be involved in the preparation of the contract to assure that all applicable requirements have been addressed and that the community's interests are represented.

**The draft contract must be submitted to MDOC for review and approval prior to signing to make sure that all required CDBG contract conditions and clauses have been included and there are no other CDBG issues that need attention.**

## **O. RECORD KEEPING REQUIREMENTS**

All CDBG recipients must maintain records regarding any procurement that will be funded by CDBG. Regardless of the method of procurement used, CDBG recipients must develop and retain adequate documentation to demonstrate their reasons for choosing the method of procurement, the basis for selection or rejection of consultants, consultant qualifications, contract specifications, and scope of work.

This documentation should include copies of the RFP or RFQ, legal advertisements, affidavits from newspapers verifying publication, and other related consultant selection materials. Your CDBG procurement files must also document the basis for the contract or purchase price.

When a grant recipient receives only one response to a competitive solicitation, the procurement process may be reviewed by MDOC to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the local government to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of restricting or eliminating competition.

Financial information in support of any contract payments must also be maintained. This documentation includes vouchers, invoices, contracts, checks, budget transfer memoranda, and other transaction documentation. The recipient must also be able to document that vouchers and invoices were reviewed to verify financial and contractual compliance before payment was made.

## **P. CONTRACT ADMINISTRATION AND SUPERVISION**

CDBG recipients should establish and maintain procedures to monitor contractor performance to ensure that they are performing in accordance with the scope of services, timetable, and any other terms and conditions specified in their contracts or purchase orders. Ongoing monitoring of the contractor's performance and progress in completing contracted work tasks will prevent problems which may affect the quality, timely completion, or cost of the contract for your overall CDBG project.

All payment requests must be carefully reviewed, before they are approved to make sure that costs are reasonable and are consistent with the terms of your contract or purchase order. Local officials should require narrative progress reports with each billing. The consultant should be requested to report on each separate product specified in the budget. Billing should list hours spent on each budget category by employee type.

If you do not understand an item on an invoice or believe a charge is not adequately documented, you should contact your consultant and resolve the questions before payment is approved. **Please refer to Section M (Contract Pricing and Method of Compensation) of this Chapter regarding CDBG's requirements for invoices for professional services.** This policy should help ensure adequate documentation for services rendered on publicly funded projects.

Some communities have found that their relationship with a consultant goes more smoothly if a specific person, such as the mayor or clerk, is assigned to act as day-to-day liaison with the consultant and to review progress reports and requests for payment. A common frustration of consultants is that too often no one is available to give them direction or feedback on issues involving the project. Communication with the consultant can also be improved by having regular meetings with the town council or an advisory group to keep local officials and residents up to date on project progress and to invite their suggestions regarding any problems that might be encountered.

If grant recipients are encountering problems with nonperformance by a contractor they should contact MDOC CDBG staff for guidance. All contracts should include provisions for termination.

## **CHAPTER 3 EXHIBITS**

- 3-A Federal Regulations Governing Conflict of Interest**
- 3-B Sample Format for an RFP for Management Services**
- 3-C Sample Format for an RFQ for Engineering Services**
- 3-D Sample Format for Advertising the Availability of a Request for Proposals or a Request for Qualifications**
- 3-E Sample Selection Criteria for Evaluating Consultant Proposals**
- 3-F Sample Format for a Professional Services Contract**
- 3-G Sample Format for CDBG Supplemental Conditions to Standard Contracts For Architectural, Engineering, And Grant Administration Services**
- 3-H Checklist of Required Contract Clauses for Engineering, Architectural, and Grant Administration Services Contracts**
- 3-I Procurement Checklist**
- 3-J Sample Consultant's Invoice**
- 3-K Compensation**

## EXHIBIT 3-A

### FEDERAL REGULATIONS GOVERNING CONFLICT OF INTEREST IN THE CDBG PROGRAM

(As adopted by the U.S. Department of Housing and Urban Development (HUD), Office of Community Planning and Development in the regulations for the Entitlement CDBG Program published in the Federal Register, September 6, 1988: 24 Code of Federal Regulations (CFR) - Part 570). In the case of Montana's CDBG Program, MDOC may act in the place of HUD regarding conflicts of interest involving local CDBG projects.

#### 570.611 Conflict of Interest

(a) Applicability

1. In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified a paragraph 570.204(c), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110, respectively, shall apply.

2. In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements, of private properties of facilities pursuant to paragraph 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to paragraphs 570.203, 570.204, or 570.455).

(b) Conflicts prohibited. Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions for responsibilities, with respect to CDBG activities, assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from CDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect hereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) Persons covered. The conflict of interest provision of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients which are receiving funds under this part.

(d) Exceptions; threshold requirements. Upon the written request of the recipient, HUD (MDOC) may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  2. An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.
- (e) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section. HUD (MDOC) shall consider the cumulative effect of the following factors, where applicable:
1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  2. Whether an opportunity was provided for open competitive bidding or negotiation;
  3. Whether the person affected is a member of a group or class of low-or-moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  4. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
  5. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;
  6. Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  7. Any other relevant considerations.

**MONTANA STATE STATUTES ESTABLISHING  
ETHICAL STANDARDS AND RULES OF CONDUCT FOR, AND PROHIBITING  
CONFLICTS OF INTEREST BY, PUBLIC OFFICIALS AND EMPLOYEES**

**2-2-104. Rules of conduct for public officers, legislators, and public employees.**

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

**2-2-105. Ethical requirements for public officers and public employees.**

(1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

**2-2-125. Rules of conduct for local government officers and employees.**

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:

- a. engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or
- b. perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 2-2-131.

**2-2-201. Public officers, employees, and former employees not to have interest in contracts.**

(1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who

contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

(d) "former employee" does not include a person whose employment with the state was involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

### **7-3-4367. Control of conflict of interest.**

(1) Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may be interested may be declared void by the commission.

(2) No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges where the same is provided by ordinance or to any commissioner or to the city manager or to the city attorney upon official business, or to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

**7-5-2106. Control of conflict of interest.**

No member of the board must be directly or indirectly interested:

- (1) in any property purchased for the use of the county;
- (2) in any purchase or sale of property belonging to the county; or
- (3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

**7-5-4109. Control of conflict of interest.**

(1) The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office.

(2) The governing body of a city or town may waive the application of the prohibition contained in subsection (1) for a city or town officer or employee, or to the relative of an officer or employee, if in an official capacity the officer or employee does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

- (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and
- (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.

**SAMPLE NOTICE FOR A PUBLIC HEARING TO REVIEW  
A POTENTIAL CONFLICT OF INTEREST**

NOTICE OF PUBLIC HEARING

The (Town Council/City of / County Commissioners) will hold a public hearing on     (day)  
    (month), 200    , in     (building or location) at     (time). The  
purpose of the hearing is to review a potential conflict of interest situation involving the (Town's,  
City's or County's)     (type of project) project which is being funded, in part, through a  
Community Development Block Grant (CDBG) from the Montana Department of Commerce. At  
the hearing, the (Council, Board of Commissioners) will explain the state and federal regulations  
governing conflict of interest, consider their application in this case, and decide whether or not to  
request the Department for an exception from the regulations. The public is invited to attend.  
Persons seeking more information about this matter should contact:  
    (Name),     (Title),     (Telephone) during regular office  
hours.

**SAMPLE CRITERIA FOR EVALUATING CONSULTANT PROPOSALS**  
**Consultant Ranking Factors**

Firm Names ↓	Scoring for: 1) Qualifications of the Professional Personnel to be Assigned to the Project	Scoring for: 2) Consultant's Capability to Meet Time and Project Budget Requirements	Scoring for: 3) Location of Firm	Scoring for: 4) Present and Projected Workloads	Scoring for: 5) Related Experience on Similar Projects	Scoring for: 6) Recent and Current Work for the Entity Issuing the RFP/RFQ	Scoring for: 7) Quality of the Proposal	Total Points (Maximum: 1400 Pts.)
	200 pts. - Best	200 pts. - Best	200 pts. - Best	200 pts. - Best	200 pts. - Best	200 pts. - Best	200 pts. - Best	
	150 pts. - Above Average	150 pts. - Above Average	150 pts. - Above Average	150 pts. - Above Average	150 pts. - Above Average	150 pts. - Above Average	150 pts. - Above Average	
	100 pts. - Average	100 pts. - Average	100 pts. - Average	100 pts. - Average	100 pts. - Average	100 pts. - Average	100 pts. - Average	
	50 pts. - Below Average	50 pts. - Below Average	50 pts. - Below Average	50 pts. - Below Average	50 pts. - Below Average	50 pts. - Below Average	50 pts. - Below Average	
	0 pts. - Poor	0 pts. - Poor	0 pts. - Poor	0 pts. - Poor	0 pts. - Poor	0 pts. - Poor	0 pts. - Poor	
1	Comments: →							0
2	Comments: →							0
3	Comments: →							0
4	Comments: →							0

## EXHIBIT 3-B

### SAMPLE FORMAT FOR REQUESTS FOR PROPOSALS FOR MANAGEMENT SERVICES

**Note:** The following is intended only as an example of a format which may be used to issue an RFP for project management services.

**Grantees should consider the content of their RFPs very carefully before they are issued. In particular, local officials should exercise care in drafting the scope of services and the factors to be used in evaluating proposals to assure that they are both complete and appropriate for your community and project.**

**See also Exhibit 3-F for a sample format for advertising the availability of the RFP.**

The (Town or City or County of) has been given a federal Community Development Block Grant (CDBG) award in the amount of \$\_\_\_\_\_ by the Montana Department of Commerce (DOC) for (description of project including purpose, location, time frame, and present status).

Contingent upon this award, the (Town or City Council or County Commission) is soliciting proposals for management services to assist the (Town, City or County) in the administration of this project in compliance with all applicable requirements under the Montana CDBG Program as described in the current edition of the Montana CDBG Program Grant Administration Manual. Payment terms will be negotiated with the selected offeror. The fee for project management services will be paid with CDBG funds.

The services to be provided will include:

1. Preparing all written reports, checklists, or legal notices required to assure compliance with federal and state environmental requirements;
2. Drafting a management plan and contract for review and approval by the DOC;
3. Establishing and maintaining project files and preparing all documentation and reports required for administration of the grant;
4. Assisting the (Town, City or County) with the selection of a project engineer, in conformance with applicable procurement requirements, including the preparation of a request for proposals;
5. Reviewing all proposed project expenditures to ensure their propriety and proper allocation to the project budget;
6. Participating in the pre-construction conference and periodic construction progress meetings;

7. Serving as the (*Town's, City's or County's*) designated Labor Standards Officer and assuring compliance with all applicable labor standards requirements;
8. Assuring compliance with all applicable civil rights requirements, including preparation of an equal employment opportunity plan and a fair housing resolution;
9. Attending (*Town or City Council or County Commission*) meetings to provide project status reports and representing the CDBG project at any other public meetings deemed necessary; and
10. Preparing all required performance reports and closeout documents and assisting the (*Town, City or County*) with the determination of applicable audit requirements.

The services will not include the disbursement or accounting of funds distributed by the (*Town's, City's or County's*) *financial* officer, legal advice, fiscal audits, or assistance with activities not related to the CDBG project.

Responses should include:

1. the firm's legal name, address, and telephone number;
2. the principal(s) of the firm and their experience and qualifications;
3. the experience and qualifications of the staff to be assigned to the project
4. a description of firm's prior experience, including any similar projects (in particular those funded by CDBG), size of community, location, total construction cost, and name of local official knowledgeable regarding the firm's performance. Include at least three references;
5. a description of the firm's current work activities, how these would be coordinated with the project, and the firm's anticipated availability during the term of the project; and
6. the proposed work plan and schedule for activities to be performed.

**Note:** The evaluation factors listed below are only examples. Local officials should include any factors which they believe are appropriate to the work tasks to be involved, with relative weightings for each according to their priority. **HUD regulations require that the RFP "identify all evaluation factors and their relative importance."**

Respondents will be evaluated according to the following factors:

- |    |   |      |
|----|---|------|
| A. | Quality of the Proposal   | ___% |
| B. | Consultant Qualifications and Experience (including reference checks) | ___% |
| C. | Availability and Capacity of the Consultant                           | ___% |

The selection of finalists to be interviewed will be based on an evaluation of the written responses. The award will be made to the most qualified offeror whose proposal is deemed most advantageous to the (Town, City, or County), all factors considered. Unsuccessful offerors will be notified in writing as soon as possible.

Questions and responses should be directed to Mayor or Commissioner, (Address), (Town), Montana, (...zip...). All responses must be postmarked no later than (...date...). Please state "CDBG Management Services Proposal" on the outside of the response package.

Respondents may review the CDBG application which includes a description of the proposed project including activities, budget, schedule, and other pertinent information by visiting the (Town, City, or County) offices during regular office hours. A copy of the application is also available for review at the offices of the Community Development Division, Montana Department of Commerce, 301 S. Park Avenue, P.O. Box 200523, Helena MT 59620-0523.

This solicitation is being offered in accordance with federal and state requirements governing procurement of professional services. Accordingly, the (Town or City Council, or County Commission) 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 3-C

### SAMPLE FORMAT FOR REQUESTS FOR QUALIFICATIONS FOR ENGINEERING SERVICES

**Note:** The following is intended only as an example of a format which may be used to issue a *Request for Qualifications* (RFQ) for engineering services. RFQ: See pages 9-8 and 9-9 and pages 3-18 through 3-25 of the CDBG Grant Administration Manual.

Grantees should consider the content of their RFQs very carefully before they are issued. In particular, local officials should exercise care in drafting the scope of services and the factors to be used in evaluating proposals to assure that they are both complete and appropriate for your community and project.

Also see also Exhibit 3-D for a sample format for advertising the availability of the RFQ.

This can be adapted for requesting qualifications for **architectural services**, which must, like engineering services be procured by an RFQ process in accord with *Section 18-8-201 to 212, MCA (and especially 18-8-204)*.

The (Town or City or County of) has received a federal Community Development Block Grant (CDBG) award in the amount of \$\_\_\_\_\_ by the Montana Department of Commerce (MDOC) for (description of project including purpose, location, time frame, and present status).

Contingent upon this award, the (Town or City Council of or the County Commission) is soliciting offerors of a statement of qualifications in response to this Request for Qualifications for engineering services to assist the (Town, City or County) in both (a) designing and (b) supervising construction of this project in compliance with all applicable requirements under the Montana CDBG Program. Payment terms will be negotiated with the selected offeror. The fee for engineering services will be paid with CDBG funds.

The services to be provided will include:

- designing system improvements and construction engineering;
- preparing the construction bid package in conformance with applicable CDBG requirements and supervising the bid advertising, tabulation, and award process, including preparing the advertisements for bid solicitation, conducting the bid opening, and issuing the notice to proceed;
- conducting the pre-construction conference;
- field staking, on-site supervising of construction work, and preparing inspection reports;
- reviewing and approving all contractor requests for payment and submitting approved requests to the governing body;

- providing reproducible plan drawings to the Town (City or County) upon project completion;
- conducting final inspection and testing;
- submitting certified "as-built" drawings to the Montana Water Quality Bureau; and
- preparing an operation and maintenance manual.

Responses should include:

1. the firm's legal name, address, and telephone number;
2. the principal(s) of the firm and their experience and qualifications;
3. the experience and qualifications of the staff to be assigned to project;
4. a description of the firm's prior experience, including any similar projects (in particular those funded by CDBG), size of community, location, total construction cost, and name of a local official knowledgeable regarding the firm's performance;
5. a description of the firm's current work activities and how these would be coordinated with the project, as well as the firm's anticipated availability during the term of the project; and
6. the proposed work plan and schedule for activities to be performed.

**Note:** *The evaluation factors listed below are examples.*

*Local officials should include those factors which they believe are appropriate to the work tasks to be involved, with relative weightings for each according to their priority, and must comply with Section 18-8-201 to 212, MCA (and especially 18-8-204) concerning the minimum criteria that must be used in evaluating engineering firms responding to a Request for Qualification, <http://data.opi.mt.gov/bills/mca/18/8/18-8-204.htm> .*

Respondents will be evaluated according to the following factors:

1. the qualifications of the professional personnel to be assigned to the project \_\_\_\_\_%
2. the consultant's capability to meet time and project budget requirements \_\_\_\_\_%
3. location \_\_\_\_\_%
4. present and projected workloads \_\_\_\_\_%
5. related experience on similar projects \_\_\_\_\_%
6. recent and current work for the entity issuing the RFP \_\_\_\_\_%

The selection of finalists to be interviewed will be based on an evaluation of the written responses. The award will be made to the most qualified offeror whose proposal is deemed most advantageous to the (Town, City, or County), all factors considered. Unsuccessful offerors will be notified as soon as possible.

Questions and responses should be directed to (Mayor/Commissioner), (address), Montana, (zipcode). All responses must be postmarked no later than (date). Please state "CDBG Engineering Services Proposal" on the outside of the response package.

Respondents may review the CDBG application which includes a description of the proposed project including activities, budget, schedule, and other pertinent information by visiting the (Town, City or County) offices during regular office hours. A copy of the application is also available for review at the offices of the Community Development Division, Montana Department of Commerce, 301 S. Park Avenue, P.O. Box 200523, Helena MT 59620-0523.

This solicitation is being offered in accordance with federal and state statutes governing procurement of professional services. Accordingly, the (Town or City Council or County Commission) 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 3-D

### SAMPLE FORMAT FOR ADVERTISING THE AVAILABILITY OF A REQUEST FOR PROPOSALS (RFP) OR REQUEST FOR QUALIFICATIONS (RFQ)

#### (SHORT FORM)

**Note:** In order to reduce the cost of publicizing an RFP or RFQ, local officials may use a format such as the following to advertise the availability of a Request for Qualifications (RFQ) for engineering -- or architectural services or a Request for Proposals (RFP) for grant administration services -- in lieu of publishing the entire text of the RFP or RFQ. If this approach is used, local officials should be sure to allow sufficient time for consultants to request and receive a copy of the RFP or RFQ and to prepare a response).

The \_\_\_\_\_ (*grantee name*) has been awarded a federal Community Development Block Grant (CDBG) in the amount of \$\_\_\_\_\_ by the Montana Department of Commerce (DOC) for \_\_\_\_\_ (*description of project*).

Contingent upon this award, the \_\_\_\_\_ (*Town or City Council or County Board of Commissioners*) is requesting proposals (statement of qualifications)s for engineering services [*or architectural services, as applicable*] to assist the governing body in designing and in supervising the construction of this project [*or, as applicable, proposals for management services to assist the (grantee name) in the administration of this project*] in compliance with all applicable requirements under the Montana CDBG Program.

Copies of the detailed request for qualifications (RFQ) [*or request for proposals/RFQ, as applicable*], including a description of the services to be provided by respondents, the minimum content of responses, and the factors to be used to evaluate the responses, can be obtained by contacting \_\_\_\_\_ (*name, address, and telephone*).

All responses to the detailed RFQ [*or RFP, as applicable*] must be submitted by \_\_\_\_\_ (*date*) to \_\_\_\_\_ (*Mayor/Commissioner*), \_\_\_\_\_ (*address*), \_\_\_\_\_, Montana \_\_\_\_\_ (*zipcode*).

## EXHIBIT 3-E

### SAMPLE SELECTION CRITERIA FOR EVALUATING CONSULTANT PROPOSALS Offered in response to RFPs or RFQs

**CONSULTANT / FIRM:** \_\_\_\_\_

**1. The Qualifications of the Professional Personnel to be Assigned to the Project**

- a. Who will do the actual work on the engineering design [or, as applicable, architectural design] and supervise construction? Does the staff to be assigned to the project on a day-to-day basis have technical training and experience appropriate to the scope of work in the RFP?

Comments:

- b. Does the firm use subcontractors for certain work? If so, which firms and for what work? Comments:

- c. Are the reference checks supportive of the consultant's technical abilities and ability to work cooperatively with local officials?

Comments:

- d. What experience does the firm have in working with State and Federal environmental and funding agencies?

Comments:

Score for qualifications of the professional personnel to be assigned to the project:

- \_\_\_\_ Best ( \_\_ points)  
\_\_\_\_ Above average ( \_\_ points)  
\_\_\_\_ Average ( \_\_ points)  
\_\_\_\_ Below average ( \_\_ points)  
\_\_\_\_ Poor ( \_\_ points)

---

**2. The Consultant's Capability to Meet Time and Project Budget Requirements**

- a. Has the consultant provided a step-by-step timetable for the work with milestones indicating when key tasks will be performed and by whom? Does the schedule appear complete and realistic?

Comments:

- b. To what extent will qualified staff be available to supervise project staff on-site?

Comments:

- c. How much time would the firm's staff actually spend in the community on a day-to-day basis over the term of the project?

Comments:

- d. Is the consultant capable of meeting the time and budget requirements for the project? What time schedule does the firm propose for completing the work?

Comments:

Score for consultant's capability to meet time and project budget requirements:

- \_\_\_ Best (\_\_ points)
  - \_\_\_ Above average (\_\_ points)
  - \_\_\_ Average (\_\_ points)
  - \_\_\_ Below average (\_\_ points)
  - \_\_\_ Poor (\_\_ points)
- 

**3. Location**

- a. Where is the firm located?

Comments:

Score for location:

- \_\_\_ Best (\_\_ points)
  - \_\_\_ Above average (\_\_ points)
  - \_\_\_ Average (\_\_ points)
  - \_\_\_ Below average (\_\_ points)
  - \_\_\_ Poor (\_\_ points)
- 

**4. Present and Projected Workloads**

- a. What is the current and projected workload of the consultant and how much time will the consultant have available to devote to the project?

Comments:

- b. What projects are the firm now working on and what new ones may be starting soon?

Comments:

Score for present and projected workloads:

- \_\_\_ Best (\_\_ points)
  - \_\_\_ Above average (\_\_ points)
  - \_\_\_ Average (\_\_ points)
  - \_\_\_ Below average (\_\_ points)
  - \_\_\_ Poor (\_\_ points)
- 

**5. Related Experience on Similar Projects**

- a. Does the consultant have experience with similar projects for similar sized communities? Which communities have they worked with in the recent past?

Comments:

- b. Does the firm have experience in designing similar systems for similar sized communities? What types of systems has the firm actually recommended, designed and installed? When were they installed? How are these systems working? What were the estimated costs? What are the present operation and maintenance costs of these systems?

Comments:

- c. How do previous clients rate the consultant's performance (i.e. reference checks)? What is the consultant's track record on similar projects for timely performance within original budgets?

Comments:

Score for related experience on similar projects:

- Best ( \_\_ points)  
 Above average ( \_\_ points)  
 Average ( \_\_ points)  
 Below average ( \_\_ points)  
 Poor ( \_\_ points)

---

**6. Recent and Current Work for the Entity Issuing the RFP/RFQ**

- a. If the consultant has done work previously for the community, how did they perform?

Comments:

Score for recent and current work for the entity issuing the RFP/RFQ:

- Best ( \_\_ points)  
 Above average ( \_\_ points)  
 Average ( \_\_ points)  
 Below average ( \_\_ points)  
 Poor ( \_\_ points)

---

**NOTE: In addition to the selection criteria listed above, another more general evaluation criterion -- one that is concerned with the overall quality of the proposal -- could potentially be added.**

**7. Quality of the Proposal**

- a. Does the proposal respond comprehensively to the tasks outlined in the request for proposals (RFP) or request for qualifications (RFQ)?

Comments:

- b. Does the proposal reflect a good understanding of the technical issues involved in the project?

Comments:

- c. Does the proposal indicate an understanding of the requirements that must be complied with for a TSEP project (and the other state and/or federal funding sources

involved)? What experience has the firm had dealing with state or federal grant or loan programs? What experience has the firm had with lending institutions or financial consultants? What experience has the firm had helping communities get financing from commercial sources (banks, bond sales)?

Comments:

- d. Has the consultant provided a clear description of how the work will be managed and how the consultant will coordinate with local officials and staff? How does the firm plan to handle public participation in this project?

Comments:

Score for quality of proposal:

- Best (\_\_ points)
- Above average (\_\_ points)
- Average (\_\_ points)
- Below average (\_\_ points)
- Poor (\_\_ points)

TOTAL NUMBER OF POINTS: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE OF REVIEWER: \_\_\_\_\_

---

**Note:**

The above factors and questions under them are only examples which are designed to fulfill federal requirements, as well as Montana's law regarding procurement of engineering, architectural, or surveying services. You may want to adapt your RFP/RFQ, including your evaluation factors and system for awarding points, to the key issues involved in your project and the type of assistance you are seeking.

If you modify the sample factors or questions, please keep in mind that Montana law (Section 18-8-204, MCA, found at <http://data.opi.mt.gov/bills/mca/18/8/18-8-204.htm>) sets out minimum criteria that should be considered for selection of architects, engineers, or surveyors.

The factors involved in reviewing responses to an RFP for grant management services may be different from those involved in an RFQ for engineering services or architectural services.

**EXHIBIT 3-F**

**SAMPLE FORMAT FOR A  
PROFESSIONAL SERVICES CONTRACT  
(Engineering, Architectural, or Grant Administration Services)**

**NOTE:** This *sample contract format* includes all required CDBG contract clauses and supplemental conditions for *engineering, architectural, or grant administration services* contracts and is meant to be used as a stand-alone contract. This sample will need to be adjusted to the type of contract (e.g., *engineering, architectural, or grant administration services*) that is being developed.

This Contract is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the [CITY/TOWN/COUNTY], Montana, herein referred to as the ["CITY/TOWN/COUNTY"] and [NAME OF CONTRACTOR], whose address is \_\_\_\_\_, herein referred to as the "Contractor,"

Witnesseth:

WHEREAS, the Montana Department of Commerce, herein referred to as "the Department," has awarded the [CITY/TOWN/COUNTY] grant funds under the Montana Community Development Block Grant (CDBG) Program for purposes of [DESCRIPTION OF PROJECT]; and

WHEREAS, the [CITY/TOWN/COUNTY] desires to engage the Contractor to render certain services related to the administration of the above described CDBG project; and

WHEREAS, the [CITY/TOWN/COUNTY] has complied with state and federal procurement requirements regarding the selection of contractors; and

WHEREAS, the [CITY/TOWN/COUNTY] desires to enter into an agreement with the Contractor as hereinafter provided to assure the effective management of the project;

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

I. LIAISONS.

**For the [CITY/TOWN/COUNTY]:**

(Name, Title, Mailing Address, Business Location, Phone Number)

**For the [CONTRACTOR]:**

(Name, Title, Mailing Address, Business Location, Phone Number)

2. EMPLOYMENT OF CONTRACTOR. The [CITY/TOWN/COUNTY] agrees to engage the Contractor, and the Contractor agrees to provide the following services in order to provide for the administration and management of the CDBG project for the [CITY/TOWN/COUNTY] as approved by the Department.

3. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any,

are employees of the [CITY/TOWN/COUNTY] for purposes of tax, retirement system, or social security (FICA) withholding.

4. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING. The Contractor may not assign, transfer, or subcontract its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the [CITY/TOWN/COUNTY]. Any subcontractor or assignee will be bound by the terms and conditions of this Contract.
5. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract shall take effect upon execution by the parties and will terminate upon completion of the SCOPE OF SERVICES hereunder as determined by the [CITY/TOWN/COUNTY], unless terminated earlier in accordance with the terms of this Contract. The activities to be performed by the Contractor will be completed according to the schedule attached hereto as Attachment \_\_\_\_ and specifically incorporated herein by this reference.
6. SCOPE OF SERVICES. The Contractor will perform the following services:

[Here, or in an exhibit to the Contract, explicitly and completely list the services and products the grant recipient expects of the Contractor, including the timetable for completion of key tasks. Consult with your CDBG liaison as to the specific services that may be appropriate for each grant category.]

It is understood and agreed by the parties that the services of the Architect and/or Engineer do not include any of the following: the disbursement or accounting of funds distributed by the [CITY'S/TOWN'S/COUNTY'S] financial officer, legal advice, fiscal audits, or assistance with activities not related to the CDBG project.

7. COMPENSATION. Neither the cost of architectural, engineering, or grant administrative services plus a percentage of that cost method nor the percentage of construction cost method will serve as the basis for compensating the architect, engineer, or grant administrator for its services provided under this Contract.

For the satisfactory completion of the services to be provided under this Contract, the [CITY/TOWN/COUNTY] will pay the Contractor a sum not to exceed \$\_\_\_\_\_ in the manner set forth in the attached Attachment \_\_\_\_, attached hereto and specifically incorporated herein by this reference. Each specific service the Contractor will provide under this Contract, and the maximum amount that the [CITY/TOWN/COUNTY] will pay the Contractor for each of these services, is set forth in the attached Attachment \_\_\_\_\_.

The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Attachment \_\_\_\_\_. The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

8. CONTRACT AMENDMENT. Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement by all parties to the Contract.
9. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the [CITY/TOWN/COUNTY] of CDBG funds from the Department and that, in the event that said funds are not provided, the [CITY/TOWN/COUNTY] incurs no responsibilities or liabilities under this Contract.
10. TERMINATION OF CONTRACT. This Contract may only be terminated in whole or in part as follows:
  - (a) Termination due to loss of funding. The [CITY/TOWN/COUNTY] may, at its sole discretion, terminate or reduce the scope of this Contract if available CDBG funding is eliminated or reduced for any reason. If a termination or modification is required, the [CITY/TOWN/COUNTY] will, to the extent permitted by available CDBG funds, compensate the Contractor for eligible work elements the Contractor has completed and for approved, eligible, reasonable, and necessary expenses incurred by the Contractor as of the revised termination date. The [CITY/TOWN/COUNTY] will give the Contractor written notice of the effective date of the modification or termination of this Contract and, if a reduction in funding is required, will provide the Contractor with a modified Project budget.
  - (b) Termination for cause.
    - (i) If the [CITY/TOWN/COUNTY] determines that the Contractor has failed to comply with the terms and conditions of the Contract, the [CITY/TOWN/COUNTY] may terminate this Contract in whole or in part at any time. The Contractor 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/TOWN/COUNTY] by reason of the Contractor's failure to comply with this Contract.

Any costs or expenses incurred by the Contractor from obligations arising during a suspension or after termination of this Contract are not allowable unless the [CITY/TOWN/COUNTY] expressly authorizes them in the notice of suspension or termination or subsequently in writing thereafter. Other necessary and not reasonably avoidable Contractor costs incurred during suspension or after termination are allowable if:

- 1) They result from obligations properly incurred by the Contractor before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, non-cancellable; and
- 2) The costs would be allowable if the Contract were not suspended or expired normally at the end of the funding period in which the termination takes effect.

- (ii) Notwithstanding the above, the Contractor is not relieved of liability to the [CITY/TOWN/COUNTY] for damages sustained by the [CITY/TOWN/COUNTY] by virtue of any breach of this Contract by the Contractor, and the [CITY/TOWN/COUNTY] may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the [CITY/TOWN/COUNTY] from the Contractor is determined.

11. AVOIDANCE OF CONFLICT OF INTEREST. The Contractor covenants 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 Contractor further covenants that, in the performing this Contract, it will employ no person who has any such interest. The Contractor will comply with the provisions of the applicable HUD regulations of 24 C.F.R. Parts 84, 85, and 570.611, and with sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.
12. DOCUMENTS INCORPORATED BY REFERENCE. The [CITY/TOWN/COUNTY] application to the Department for CDBG funding, dated \_\_\_\_\_, 20\_\_, including any written modifications resulting from the review of the application by the Department, and all applicable federal, state, and local laws, rules, and regulations, are incorporated into this Contract by this reference and are binding upon the Contractor.
13. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the [CITY/TOWN/COUNTY], and the Department, which both have royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, in whole or part, such property and any information relating thereto. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in any other country without the prior written approval of the the [CITY/TOWN/COUNTY], and the Department.

To the extent the CDBG funds dispersed under this Contract will be used by any small business firm or non-profit organization, as defined in 37 C.F.R. 401.2, such firm(s) or organization(s) are subject to the standard patent rights clause set forth in its entirety in 37 C.F.R. 401.14 and specifically incorporated herein by this reference.

14. ACCESS TO AND RETENTION OF RECORDS. The Contractor agrees to provide the [CITY/TOWN/COUNTY], the Department, HUD, Comptroller General of the United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of four (4) years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Contractor's offices in

\_\_\_\_\_, Montana.

15. **REPORTS AND INFORMATION.** The Contractor 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/TOWN/COUNTY] to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the [CITY/TOWN/COUNTY] or its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Contract unless permission to destroy them is granted by the [CITY/TOWN/COUNTY]
16. **PROJECT MONITORING.** The [CITY/TOWN/COUNTY], the Department, or any of their authorized agents may monitor and inspect all phases and aspects of the Contractor's performance to determine compliance with the SCOPE OF ACTIVITIES, and other technical and administrative requirements of this Contract, including the adequacy of the Contractor's records and accounts. The [CITY/TOWN/COUNTY] will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the [CITY/TOWN/COUNTY].
17. **INDEMNIFICATION.** The Contractor agrees to protect, defend, and save the [CITY/TOWN/COUNTY] and the State, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, and subcontractors.
18. **INSURANCE.**
  - A. **General Requirements.** The Contractor shall maintain for the duration of this Agreement, at its cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the duties and obligations in this Contract by the Contractor, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
  - B. **Primary Insurance.** The Contractor's insurance coverage shall be primary insurance with respect to the [CITY/TOWN/COUNTY], the Department, the State of Montana, and their elected or appointed officers, officials, employees, or volunteers. The [CITY's/TOWN's/COUNTY's] and the State's insurance coverage is excess to the Contractor's insurance coverage and shall not contribute with it.
  - C. **General Liability Insurance.** The Contractor shall purchase and maintain Commercial General Liability (Occurrence coverage), to include bodily injury, personal injury, and property damage, with combined single limits of \$1,000,000 per occurrence and \$2,000,000 per aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents,

employees, representatives, assigns, or subcontractors. The [CITY/TOWN/COUNTY], the State, the Department, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

- D. Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \_\_\_\_\_ per occurrence and \_\_\_\_\_ aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.
- E. General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana with a Best's rating of at least A-. All certificates and endorsements are to be received by the [CITY/TOWN/COUNTY] prior to beginning any use, occupancy, operation, or management of the subject property under this Contract. The Contractor shall notify the [CITY/TOWN/COUNTY] immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The [CITY/TOWN/COUNTY] reserves the right to request complete copies of the Contractor's insurance policies at any time, including endorsements.
19. CIVIL RIGHTS ACT OF 1964. The Contractor will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VII, 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.
20. COMPLIANCE WITH NONDISCRIMINATION LAW. The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local nondiscrimination laws, rules, and regulations, including but not limited to the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section 109 of the Housing and Community Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Executive Order 11246 of Sept. 24, 1965, and Section 504 of the Rehabilitation Act of 1973. Any contracting, subletting, or subcontracting by the Grantee subjects contractors, subcontractors, and subrecipient entities to the same provision. In accordance with Mont. Code Ann. § 49-3-207, the Grantee agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

21. COMPLIANCE WITH WORKERS' COMPENSATION ACT. Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the [CITY/TOWN/COUNTY] under this Contract. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the [CITY/TOWN/COUNTY] or the State of Montana. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and any renewal documents must be sent to the [CITY/TOWN/COUNTY].
22. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Contractor 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.
23. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Contractor 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. Further, the Contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.
24. MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Contractor will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor will document all affirmative steps taken to solicit minority businesses and will forward this documentation along with the names of the minority subcontractors and suppliers to the local government CDBG recipient upon request.
25. JURISDICTION AND VENUE. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

This Contract will be construed under and governed by the laws of the State of Montana.

26. 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's fees and other costs and expenses, whether the same are incurred with or without suit.

27. **ELIGIBILITY.** The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)
28. **DEBARMENT.** The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the [CITY/TOWN/COUNTY].

The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

29. **FORCE MAJEURE.** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.
30. **SEPARABILITY.** A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.
31. **NOTICE.** All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons as identified herein either by first class mail or personal service.
32. **REFERENCE TO CONTRACT.** The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.
33. **NO ARBITRATION.** Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under this Contract.
34. **NO WAIVER OF BREACH.** No failure by the Department to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the Department to enforce each and all of the provisions hereof upon any further or other breach on the part of the Grantee.
35. **INTEGRATION.** The Contract contains the entire agreement between the parties,

and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

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

[CONTRACTOR]:

[CITY/TOWN/COUNTY OF]:

\_\_\_\_\_

\_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## EXHIBIT 3-G

### **CDBG SUPPLEMENTAL CONDITIONS TO STANDARD CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND GRANT ADMINISTRATION SERVICES**

**Note:** This document should be used as a *supplement to* a firm's existing contract format, i.e., *in conjunction with* a firm's existing contract format. (Compare Exhibit 3-F, Sample Format for a Professional Services Contract. Exhibit 3-F is meant to serve as a stand-alone contract document, while Exhibit 3-G is meant as a supplement to an existing contract format.)

These Supplemental Conditions must be attached to the firm's existing contract format, and specifically incorporated by reference therein. The firm's contract must also contain the following language: "In the event of a conflict between any term and provision of this Contract or any attachments hereto and the CDBG Supplemental Conditions, the terms and provisions of the CDBG Supplemental Conditions shall prevail."

#### I. LIAISONS.

##### **For the [CITY/TOWN/COUNTY]:**

(Name, Title, Mailing Address, Business Location, Phone Number)

##### **For the Grantee:**

(Name, Title, Mailing Address, Business Location, Phone Number)

2. INDEPENDENT CONTRACTOR. It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any, are employees of the [CITY/TOWN/COUNTY] for purposes of tax, retirement system, or social security (FICA) withholding.
3. EFFECTIVE DATE AND TIME OF PERFORMANCE. This Contract shall take effect upon execution by the parties and will terminate upon completion of the SCOPE OF SERVICES hereunder as determined by the [CITY/TOWN/COUNTY], unless terminated earlier in accordance with the terms of this Contract. The activities to be performed by the Contractor will be completed according to the schedule attached hereto as Attachment \_\_\_\_ and specifically incorporated herein by this reference.
4. SCOPE OF SERVICES. The Contractor will perform the following services:

[Here, or in an exhibit to the Contract, explicitly and completely list the services and products the grant recipient expects of the Contractor, including the timetable for

completion of key tasks. Consult with your CDBG liaison as to the specific services that may be appropriate for each grant category.]

It is understood and agreed by the parties that the services of the Contractor do not include any of the following: the disbursement or accounting of funds distributed by the [CITY'S/TOWN'S/COUNTY'S] financial officer, legal advice, fiscal audits, or assistance with activities not related to the CDBG project.

5. COMPENSATION. Neither the cost of architectural, engineering, or grant administrative services plus a percentage of that cost method nor the percentage of construction cost method will serve as the basis for compensating the architect, engineer, or grant administrator for its services provided under this Contract.

For the satisfactory completion of the services to be provided under this Contract, the [CITY/TOWN/COUNTY] will pay the Contractor a sum not to exceed \$\_\_\_\_\_ in the manner set forth in the attached Attachment \_\_\_\_, attached hereto and specifically incorporated herein by this reference. Each specific service the Contractor will provide under this Contract, and the maximum amount that the [CITY/TOWN/COUNTY] will pay the Contractor for each of these services, is set forth in the attached Attachment \_\_\_\_\_.

The amount to be paid will be calculated according to the hourly billing rates for the various personnel as described in Attachment \_\_\_\_\_. The Contractor may submit monthly requests for payment, based on actual work performed, which must be accompanied by an itemized invoice describing the services furnished, the number of hours worked to accomplish each item, the amount being billed for each item, a description of any other eligible expenses incurred during the billing period, and the total amount being billed.

6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING. The Contractor may not assign, transfer, or subcontract its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the [CITY/TOWN/COUNTY]. Any subcontractor or assignee will be bound by the terms and conditions of this Contract.
7. CONTRACT AMENDMENT. Except as otherwise set forth herein, this Contract may not be enlarged, modified, or altered except upon written agreement by all parties to the Contract.
8. PRE-CONSTRUCTION CONFERENCE. Before the start of construction, a conference will be held for the purpose of familiarizing the successful bidder with the federal and State requirements that apply to projects funded in whole or in part by a Community

Development Block Grant (CDBG). The conference will also include a discussion of project supervision, coordination with city or county officials, on-site inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety, and other issues pertinent to the project. The Contractor may be responsible for conducting this conference.

9. CONDITIONAL AGREEMENT. It is expressly understood by the parties hereto that this Contract is dependent and conditioned upon the receipt by the [CITY/TOWN/COUNTY] of CDBG funds from the Department and that, in the event that said funds are not provided, the [CITY/TOWN/COUNTY] incurs no responsibilities or liabilities under this Contract.
  
10. TERMINATION OF CONTRACT. This Contract may only be terminated in whole or in part as follows:
  - (a) Termination due to loss of funding. The [CITY/TOWN/COUNTY] may, at its sole discretion, terminate or reduce the scope of this Contract if available CDBG funding is eliminated or reduced for any reason. If a termination or modification is required, the [CITY/TOWN/COUNTY] will, to the extent permitted by available CDBG funds, compensate the Contractor for eligible work elements the Contractor has completed and for approved, eligible, reasonable, and necessary expenses incurred by the Contractor as of the revised termination date. The [CITY/TOWN/COUNTY] will give the Contractor written notice of the effective date of the modification or termination of this Contract and, if a reduction in funding is required, will provide the Contractor with a modified Project budget.
  
  - (b) Termination for cause.
    - (i) If the [CITY/TOWN/COUNTY] determines that the Contractor has failed to comply with the terms and conditions of the Contract, the [CITY/TOWN/COUNTY] may terminate this Contract in whole or in part at any time. The Contractor 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/TOWN/COUNTY] by reason of the Contractor's failure to comply with this Contract.

Any costs or expenses incurred by the Contractor from obligations arising during a suspension or after termination of this Contract are not allowable unless the [CITY/TOWN/COUNTY] expressly authorizes them in the notice of suspension or termination or subsequently in writing thereafter. Other necessary and not reasonably avoidable Contractor costs incurred during suspension or after termination are allowable if:

- 1) They result from obligations properly incurred by the Contractor before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, non-cancellable; and
  - 2) The costs would be allowable if the Contract were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (ii) Notwithstanding the above, the Contractor is not relieved of liability to the [CITY/TOWN/COUNTY] for damages sustained by the [CITY/TOWN/COUNTY] by virtue of any breach of this Contract by the Contractor, and the [CITY/TOWN/COUNTY] may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the [CITY/TOWN/COUNTY] from the Contractor is determined.
11. AVOIDANCE OF CONFLICT OF INTEREST. The Contractor covenants 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 Contractor further covenants that, in the performing this Contract, it will employ no person who has any such interest. The Contractor will comply with the provisions of the applicable HUD regulations of 24 C.F.R. Parts 84, 85, and 570.611, and with sections 2-2-121, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.
12. DOCUMENTS INCORPORATED BY REFERENCE. The [CITY/TOWN/COUNTY] application to the Department for CDBG funding, dated \_\_\_\_\_, 20\_\_, including any written modifications resulting from the review of the application by the Department, and all applicable federal, state, and local laws, rules, and regulations, are incorporated into this Contract by this reference and are binding upon the Contractor.
13. OWNERSHIP AND PUBLICATION OF MATERIALS. All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are the property of the [CITY/TOWN/COUNTY], and the Department, which both have royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, in whole or part, such property and any information relating thereto. Any reuse without written verification or adaptation by the Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or part under this Contract may be copyrighted or patented in the United States or in

any other country without the prior written approval of the the [CITY/TOWN/COUNTY], and the Department.

To the extent the CDBG funds dispersed under this Contract will be used by any small business firm or non-profit organization, as defined in 37 C.F.R. 401.2, such firm(s) or organization(s) are subject to the standard patent rights clause set forth in its entirety in 37 C.F.R. 401.14 and specifically incorporated herein by this reference.

14. ACCESS TO AND RETENTION OF RECORDS. The Contractor agrees to provide the [CITY/TOWN/COUNTY], the Department, HUD, Comptroller General of the United States, Montana Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of four (4) years after either the completion date of the Contract or the conclusion of any claim, litigation, or exception relating to the Contract taken by the State of Montana or third party, whichever is later. These records will be kept in the Contractor's offices in \_\_\_\_\_, Montana.
15. PROJECT MONITORING. The [CITY/TOWN/COUNTY], the Department, or any of their authorized agents may monitor and inspect all phases and aspects of the Contractor's performance to determine compliance with the SCOPE OF ACTIVITIES, and other technical and administrative requirements of this Contract, including the adequacy of the Contractor's records and accounts. The [CITY/TOWN/COUNTY] will advise the Contractor of any specific areas of concern and provide the Contractor opportunity to propose corrective actions acceptable to the [CITY/TOWN/COUNTY].
16. JURISDICTION AND VENUE. This Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

This Contract will be construed under and governed by the laws of the State of Montana.

17. INDEMNIFICATION. The Contractor agrees to protect, defend, and save the and the State, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services

or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, and subcontractors.

18. INSURANCE.

- A. General Requirements. The Contractor shall maintain for the duration of this Agreement, at its cost and expense, primary liability insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the duties and obligations in this Contract by the Contractor, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.
- B. Primary Insurance. The Contractor's insurance coverage shall be primary insurance with respect to the [CITY/TOWN/COUNTY], the Department, the State of Montana, and their elected or appointed officers, officials, employees, or volunteers. The [CITY'S/TOWN'S/COUNTY'S] and the State's insurance coverage is excess to the Contractor's insurance coverage and shall not contribute with it.
- C. General Liability Insurance. The Contractor shall purchase and maintain Commercial General Liability (Occurrence coverage), to include bodily injury, personal injury, and property damage, with combined single limits of \$1,000,000 per occurrence and \$2,000,000 per aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, employees, representatives, assigns, or subcontractors. The [CITY/TOWN/COUNTY], the State, the Department, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.
- D. Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three (3) year tail for claims that are made (filed) after the cancellation or expiration date of the policy.
- E. Construction Insurance [applicable only if DOING CONSTRUCTION WORK is the direct responsibility of the contractor]. At its sole cost and expense,

Contractor shall insure all property construction on the premises throughout the term of the Agreement against the following hazards:

- (1) Loss of damage by fire and such other risks (not including earthquake damage) in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. This may be insured against by attachment of standard form extended coverage endorsement to fire insurance policies.
- (2) Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises.
- (3) Loss or damage by explosion of steam boilers, pressure vessels, and oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the premises.

F. General Provisions. All insurance coverage shall be placed with a carrier licensed to do business in the State of Montana with a Best's rating of at least A-. All certificates and endorsements are to be received by the [CITY/TOWN/COUNTY] prior to beginning any use, occupancy, operation, or management of the subject property under this Contract. The Contractor shall notify the [CITY/TOWN/COUNTY] immediately of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. The [CITY/TOWN/COUNTY] reserves the right to request complete copies of the Contractor's insurance policies at any time, including endorsements.

19. COMPLIANCE WITH NONDISCRIMINATION LAW. The Grantee must, in performance of work under the Contract, fully comply with all applicable federal, state, or local nondiscrimination laws, rules, and regulations, including but not limited to the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section 109 of the Housing and Community Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Executive Order 11246 of Sept. 24, 1965, and Section 504 of the Rehabilitation Act of 1973. Any contracting, subletting, or subcontracting by the Grantee subjects contractors, subcontractors, and subrecipient entities to the same provision. In accordance with Mont. Code Ann. § 49-3-207, the Grantee agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Contract.

20. CIVIL RIGHTS ACT OF 1964. The Contractor will abide by the provisions of the Civil Rights Act of 1964 which states that under Title VII, 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.

21. COMPLIANCE WITH WORKERS' COMPENSATION ACT. Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the [CITY/TOWN/COUNTY] under this Contract. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the [CITY/TOWN/COUNTY] or the State of Montana. This insurance/exemption must be valid for the entire term of the Contract. Proof of compliance and any renewal documents must be sent to the [CITY/TOWN/COUNTY].

22. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974. The Contractor 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.

23. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968. The Contractor 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. Further, the Contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

24. MINORITY BUSINESS ENTERPRISE. Consistent with the provisions of Executive Order 11246, the Contractor will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor will document all affirmative steps taken to solicit minority businesses and will forward this documentation along with the names of the minority subcontractors and suppliers to the local government CDBG recipient upon request.

25. 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's fees and other costs and expenses, whether the same are incurred with or without suit.

26. **ELIGIBILITY.** The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension". (24 CFR 24.505)
27. **DEBARMENT.** The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Contract by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the [CITY/TOWN/COUNTY].

The Contractor certifies and agrees to ensure during the term of this Contract that neither it nor its principals, contractors, subcontractors, or subrecipient entities are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

28. **FORCE MAJEURE.** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.
29. **SEPARABILITY.** A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.
30. **NOTICE.** All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons as identified herein either by first class mail or personal service.
31. **REFERENCE TO CONTRACT.** The Contract number must appear on all invoices, reports, and correspondence pertaining to the Contract.

32. NO ARBITRATION. Unless otherwise agreed to in writing or provided for by law, arbitration is not available to the parties as a method of resolving disputes that would arise under this Contract.
33. NO WAIVER OF BREACH. No failure by the Department to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the Department to enforce each and all of the provisions hereof upon any further or other breach on the part of the Grantee.
34. INTEGRATION. The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein or in a properly executed amendment hereto are valid or binding.

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

CONTRACTOR:

\_\_\_\_\_

CITY/TOWN/COUNTY OF:

\_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## EXHIBIT 3-H

### CHECKLIST OF REQUIRED CONTRACT CLAUSES FOR ENGINEERING, ARCHITECTURAL, AND GRANT ADMINISTRATION SERVICES CONTRACTS (See Exhibit 3-F)

This checklist is to be used by local governments and CDBG staff for contract review. An asterisk (\*) indicates clauses which are required for all professional services contracts.

- \_\_\_ 1. EMPLOYMENT OF CONTRACTOR
- \_\_\_ 2. (\*) INDEPENDENT CONTRACTOR
- \_\_\_ 3. LIAISON
- \_\_\_ 4. (\*) EFFECTIVE DATE AND TIME OF PERFORMANCE
- \_\_\_ 5. (\*) SCOPE OF SERVICES
- \_\_\_ 6. (\*) COMPENSATION (Check contract pricing for engineering contracts. Review the basis of payment for reasonable performance measures)
- \_\_\_ 7. (\*) CONFLICT OF INTEREST
- \_\_\_ 8. MODIFICATION AND ASSIGNABILITY OF CONTRACT
- \_\_\_ 9. CONDITIONAL AGREEMENT
- \_\_\_ 10. (\*) TERMINATION OF CONTRACT
- \_\_\_ 11. (\*) DOCUMENTS INCORPORATED BY REFERENCE (N/A for engineering services contracts)
- \_\_\_ 12. (\*) CIVIL RIGHTS ACT OF 1964
- \_\_\_ 13. (\*) SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF ACT 1974

- \_\_\_ 14. (\*) SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968
- \_\_\_ 15. (\*) MINORITY BUSINESS ENTERPRISE
- \_\_\_ 16. (\*) NONDISCRIMINATION
- \_\_\_ 17. (\*) OWNERSHIP AND PUBLICATION OF MATERIALS
- \_\_\_ 18. (\*) REPORTS AND INFORMATION
- \_\_\_ 19. (\*) ACCESS TO RECORDS
- \_\_\_ 20. (\*) PLACE OF PERFORMANCE, CONSTRUCTION AND VENUE
- \_\_\_ 21. INDEMNIFICATION
- \_\_\_ 22. LEGAL FEES
- \_\_\_ 23. (\*) ELIGIBILITY (Plus CDBG must do a debarment check of the contractor and the contractor's principal parties)

**EXHIBIT 3-I  
Procurement Check List**

<b>PROCUREMENT CHECKLIST</b>	
<input type="checkbox"/>	<b>Engineering Services</b>
<input type="checkbox"/>	<b>Architectural Services</b>
<input type="checkbox"/>	<b>Grant Management Services</b>
<input type="checkbox"/>	<b>Other : _____</b>
<b>Procurement Requirements</b>	
<b>Date:</b>	
	a. scope of RFP/RFQ or project work description clearly delineated?
	b. appropriate advertisement (or phone solicitation, as applicable) was conducted and documented?
	c. objective scoring criteria and process used?
	d. record of selection process?
	e. references checked?
	f. fixed price contract with delineation of hourly pay rates and estimated hours?
	g. CDBG supplemental conditions included in the contract?
	h. draft contract reviewed and approved by CDBG liaison?
	i. contractor eligibility/debarment check completed by CDBG (prior to notification of award)?
	j. copy of signed contract and notification of award submitted to CDBG, along with documentation concerning items b - f?
	k. other conditions, as applicable:
<b>NOTES:</b>	

**Exhibit 3-J**

**EXAMPLE OF A CONSULTANT'S INVOICE**

(See pages 3-25 through 3-27, CDBG Administration Manual)

**DELANEY WATER SYSTEM PROJECT**

**Aim-To-Please Staff Project Hours  
October, 2007**

<u>Staff</u>	<u>Hours</u>	<u>Activity</u>	<u>Date Performed</u>
Winthrop	.5	Update with engineer on tank site (50 travel miles)	10/3/07
Winthrop	2.0	Prepare drawdown #3 and progress report	10/4/07
Simpson	1.0	Prepare planning maps for the District	10/11/07
Winthrop	1.0	Review acquisition with engineers	10/12/07
Winthrop	2.0	Prepare drawdown #4 and progress report	10/12/07
Simpson	3.0	Acquisition process with reservoir, meet with reservoir site owners	10/15/07
<b>Total Hours</b>	Winthrop 7.5 Simpson 4.0		
Winthrop	7.5 hours @ \$24/hour		\$180.00
Simpson	4.0 hours @ \$20/hour		\$ 80.00
	Travel to Delaney tank site (50 mi. @ \$.355/mi.)		<u>\$ 17.75</u>
	Invoice Total:		\$277.75

See the attached additional documentation substantiating the charges.

## EXHIBIT 3-K

### COMPENSATION

Note: Whenever possible, the local government is required to assure that the basis for compensating a contractor or consultant is tied to measurable objectives such as the completion of key tasks in the scope of services or implementation schedule. The least desirable approach is compensation strictly on the basis of time periods since this provides the local government less control over contractor performance.

The example below for a housing rehabilitation project, provides for payment on the basis of the completion of major project management steps and upon the basis of the number of homes under contract and/or completed.

Compensation for services will be provided in installments, based on actual work performed. Payment will be based upon the completion of key components of the adopted project implementation schedule (and on the basis of a set hourly rate). Contractor requests for payment may be submitted monthly and must be accompanied by itemized invoices describing services furnished, number of hours worked to accomplish each item, amount being billed for each item, a description of any other eligible reimbursable expenses incurred during the billing period, and the total amount being billed, and a written narrative report which adequately describes and documents the work performed during that period relative to the adopted implementation schedule for the project. Total payment for the services rendered under this Contract will not exceed \$\_\_\_\_\_.

Compensation for project administration services will be provided in installments, based on actual work performed. Payment will be based upon the completion of key components of the adopted project implementation schedule and upon the basis of the number of homes under contract for rehabilitation and demolition and the number completed.

#### Scope of Services/Work Elements

#### Maximum Compensation to the Contractor:

- |   |         |
|---|---------|
| a. Commence Start-Up Activities                           | \$_____ |
| b. Completion of Environmental Review                     | \$_____ |
| c. Preparation of Draft Housing Rehabilitation Guidelines | \$_____ |
| d. Assure Labor Standards Compliance                      | \$_____ |
| e. Approval of Project Closeout by MDOC                   | \$_____ |

Payment to the Contractor shall be on the basis of \$\_\_\_\_\_ per unit for rehabilitation contracts and \$\_\_\_\_\_ for demolition contracts with a two-thirds payment authorized at the time a rehabilitation or demolition contract is finalized. For housing rehabilitation contracts, the one-third balance will be provided to the Contractor when the mortgage, escrow agreement, or lien is filed for the rehabilitated property. Final payments for demolition work will be due upon the completion and final certification of contract performance.