

A Fire/EMS/Safety CENTER PUBLICATION



Minnesota
STATE COLLEGES
& UNIVERSITIES

**THE ASSISTANCE TO FIREFIGHTER GRANT
PROGRAM
AWARD OF FUNDS AND THE BID PROCESS
RESPONSIBILITIES**

**Original: May 2007
Revised: February 2010**

**Minnesota State Colleges and
Universities
Fire/EMS/Safety Center Library
Wells Fargo Place
30 7th Street East, Suite 350
St. Paul, MN 55101-7804
651-649-5454
800-311-3143
651-649-5409 FAX
www.firecenter.mnscu.edu**

The State level Public Safety training office, Fire/EMS/Safety Center was established in 1957. Fire/EMS/Safety Center's mission is to advance the professional development of emergency services personnel and of other persons engaged in fire prevention and control and other Public Safety activities. The Fire/EMS/Safety Center has developed an effective program linkage with established Minnesota State Colleges and Universities public safety training programs which exist at the local levels. It is the responsibility of this division to support and strengthen these delivery systems. The Fire/EMS/Safety Center is the point of contact for the Department of Homeland Securities, Federal Emergency Management Agency (FEMA) National Fire Academy (NFA).

The Fire/EMS/Safety Center gathers and distributes information concerning and benefiting the fire service. It gathers and catalogs information and houses an extensive library. Its staff uses those resources as a foundation to offer advice and consultation to fire departments, municipal officials, state agencies, legislators and the public. The State Director of Fire Training facilitates the delivery of firefighting training programs to over 12,000 Minnesota firefighters on an annual basis. In conjunction with the Minnesota State Colleges, the Fire/EMS/Safety Center sponsors the Minnesota State Fire School.

Fire/EMS/Safety Center
Minnesota State Colleges & Universities
1450 Energy Park Drive – Suite 100-B
St. Paul, Minnesota 55108-5265
651/649-5454
800-311-3143
Fax: 651/649-5409
<http://www.firecenter.mnscu.edu>

Author

Warren R. Jorgenson

Southern District Coordinator

Office of The Chancellor

Minnesota State Colleges and Universities District Office

1205 16th St SW

Willmar, MN 56201-2825

320-231-5454 - District Office Call anytime 320-894-5071 - Cell

320-231-5454 - Fax

wjorgen@gmail.com

Low Bid Clarification Assistance to Firefighters Grant Program (AFGP)

The following information is prepared based on communications with the program staff Assistance to Firefighters Program Office in Washington, DC., League of Minnesota cities documents and staff and the author, Warren Jorgenson, Fire/EMS/Safety Center.

We frequently receive questions about the spending of award dollars and the low bid award process. The interoperability and other issues that are spelled out in the AFG program guidance sometimes appears to conflict with the lowest bidder on equipment etc.

This document is intended to provide guidance to governing authorities with some direction with regards to the requirement to always except the lowest bid from vendors for the AFG program.

This document addresses the direction from the Assistance to Firefighter Grant Program (AFG) and how their requirements impact the bidding process and the use of **Minnesota's Cooperative Purchasing Venture (CPV)**.

**Assistance to Firefighters Program Office in Washington, DC.,
Help Desk: 1-866-274-0960 or firegrants@dhs.gov**

Competition is a must. There is no excuses/exemptions/waivers/amnesty/forgiveness of the requirement to get the best deal. If you are using Federal funds you must demonstrate that you have instilled competition in your procurement. The grantees with formal procurement processes must use their own process (e.g., they must treat the Federal funds with the same care/prudence that they treat their own funds).

If the grantee doesn't have a formal process then they must assure that competition is instilled in accordance with the OMB Circulars (*see note below). **Unfortunately, the Circulars don't dictate or define what "competition" means, but intuitively it means more than one quote. As such, no less than two quotes must be obtained.**

The Federal government is not obligated to reimburse grantees for expenses where there is no evidence of competition. Minimally, we could/would question what we would consider to be the excess costs over what could have been a lower quote. Worst case scenario is that we could question the entire expense.

For legitimate expenses where competition was instilled, we are only obligated to pay the lesser amount – the low bid.

A low bid may be passed-over and a higher bid accepted (and we would allow the higher costs) IF the grantee's formal procurement process allows for such. For example, most procurement policies dictate low bid as fait accompli (something that has happened and is

unlikely to be reversed). But some have provisions for skipping over the low bid and selecting a higher-cost bid. Again, any such action must be allowed for, and consistent with, the grantee's policy. If not, then they jeopardize reimbursement.

If a grantee has no procurement policy and they can't accept the low bid, then we might allow reimbursement of the higher-cost bid if there is sufficient justification (interoperability, maintenance, etc.).

Emphasis for FY 2010 – Procurement Integrity

Through audits conducted by the Department of Homeland Security's Office of Inspector General (OIG) and through the Assistance to Firefighters Program Office grant monitoring, it has become apparent that some Assistance to Firefighters Grant (AFG) recipients have not adhered, or are not totally adhering, to the proper procurement requirements when spending grant funds. Anything less than full compliance with Federal procurement policies jeopardizes the integrity of the grant as well as the grant program. As such, in FY 2010 we will place a greater emphasis on oversight of grantees' procurement actions. Below, we have reiterated the Federal procurement requirements for fire departments and EMS organizations grantees when buying goods and services with Federal grant funds. DHS will include a review of grantees' procurement practices as part of the normal monitoring activities.

Competition: All procurement transactions shall be conducted in a manner that provides, to the maximum extent practical, open and free competition. Grantees are expected to promote competition and ensure advantageous pricing by soliciting bids from multiple vendors. Purchases shall be made from the vendor whose bid is responsive to the solicitation and is most advantageous to the grantee when price, quality, and other factors are considered. Grantees may use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal laws and standards. Grantees who fail to adhere to their own procurement policy, or otherwise fail to fully "compete" any purchase involving Federal funds, may find that their expenditures will be questioned and subsequently disallowed.

Documentation: Grantees are required to maintain and retain backup documentation such as bids, quotes, and cost/price analyses on file for review by Federal personnel. The required documentation for federally funded purchases should include specifications, solicitations, competitive quotes or proposals, basis for selection decisions, purchase orders or contracts, invoices, and cancelled checks. Grantees who fail to fully document their purchases may find that their expenditures will be questioned and subsequently disallowed.

Specifications: Specifications developed for solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by the recipient. However, those specifications may not be so narrowly constructed or contain features which unduly limit, restrict, or eliminate competition unnecessarily. Grantees may,

when developing their solicitations, list factors that will be used in their evaluation of proposals that are submitted, as long as those evaluation factors are not found to limit competition. Finally, grantees cannot impose in-State or local geographical preferences in the evaluation of bids or proposals. Applicants and grantees are encouraged to obtain product information from vendors in order to be more informed about the items they plan to purchase. However, grantees may not use specifications obtained from vendors for any solicitation with Federal grant ii iii funds if the specifications would be found to be restrictive. It is the grantee's responsibility to assure that vendor specifications are not used in a manner which would result in restricting or limiting competition from other vendors of similar products. Additionally, if a vendor or manufacturer drafts, writes, edits, critiques, or provides any direct consultation on a grant application that vendor or manufacturer cannot submit a bid for that purchase. Likewise, if a vendor or manufacturer drafts, writes, edits, critiques, or provides any direct consultation on a specification to be used for the solicitation for the purchase of a specific product, that vendor or manufacturer cannot submit a bid for that purchase. See Conflicts of Interest below.

Grantees shall, on request, make available to DHS pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, *etc.*, if

- 1) the purchase specifies a "brand name" product or
- 2) the proposed award is to be awarded to other than the apparent low bidder under a sealed bid process.

Grantees found to be using proprietary, or otherwise limiting specifications, may find their expenditures questioned and subsequently disallowed.

Personal and Organizational Conflicts of interest: In order to ensure objective vendor performance and eliminate a real or apparent unfair competitive advantage, anyone that develops or drafts specifications, requirements, statements of work (including the grant application), invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements. Additionally, no employee, officer, or agent of the grantee shall participate in the selection, award, or administration of a procurement supported by Federal funds if a real or an apparent conflict of interest would be involved.

A conflict of interest could arise when any of the following conditions exists:

- a) An officer, employee, or agent of the grantee has a financial or other interest in the vendor selected for the procurement.
- b) Any member of the grantee's officers', employees', or agents' immediate family has a financial or other interest in the vendor selected for the procurement.
- c) An organization which employs a grantee's officer, employee, or agent is a vendor or has a financial or other interest in the vendor selected for the procurement.

For the purposes of this program, we consider volunteers of an organization and grant writers to be employees, officers, and/or agents of the grantee. As such, no volunteer or member of an organization or anyone involved in the application for funding can participate in, or benefit from, the procurement if Federal funds are involved. Grantees that purchase

items with grant funds from vendors who employ any of their volunteers/members will have to document how they avoided a conflict of interest during the procurement process (*i.e.*, specific details regarding how the members/volunteers removed themselves, or how they were prevented from participating in the process). Grantees who fail to fully document their purchases may find that their expenditures will be questioned and subsequently disallowed.

Grantee Responsibilities

AFG award recipients (grantees) must agree to:

(5) Ensure all procurement transactions are conducted in a manner to provide, to the maximum extent practical, open and free competition. Grantees are expected to promote competition and ensure advantageous pricing by soliciting bids from multiple vendors and to select the lowest bidder able to meet the requirements. Procurements shall be made from the bidder whose offer is responsive to the solicitation and is most advantageous to the grantee when price, quality, and other factors are considered. The grantee must follow its established procurement processes when purchasing vehicles, equipment, and services with AFG funds. If the grantee has no established procedures, it should obtain at least two quotes/bids for the items being procured and document the process used in the grant files. Sole-source purchasing is not an acceptable procurement method except in unusual circumstances. Grantees who fail to adhere to their own procurement policy or otherwise fail to fully “compete” any transaction involving Federal funds may find that their expenditures will be questioned and subsequently disallowed. Specifications developed for solicitations shall clearly set forth all requirements that the bidder shall fulfill in order for the bid or offer to be evaluated by the recipient. However, those specifications may not be so narrowly constructed or contain features which unduly limit, restrict, or eliminate competition unnecessarily. *See also* Item 7 below regarding conflicts of interest. Grantees shall, on request, make available to DHS, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, *etc.*, if a) the procurement specifies a "brand name" product, or b) the proposed award is to be awarded to other than the apparent low bidder under a sealed 58 bid process. Grantees found to be using proprietary specifications may find that their expenditures will be questioned and subsequently disallowed.

(6) Conduct all bidding activities (solicitation, receipt, and evaluation) after award, *i.e.*, during the period of performance. Quotes obtained prior to submittal of the application - for the purposes of applying for this grant - are not considered to be sufficient to satisfy the requirements for competition as outlined at 44 CFR Part 13. Grantees may be jeopardizing their awards if they do not adhere to the requirements set forth herein.

(7) Avoid conflicts of interest in order to ensure objective vendor performance and eliminate a real or an apparent unfair, competitive advantage. Grantees must assure that anyone that develops or drafts specifications, requirements, statements of work (*including the grant application*), invitations for bids and/or requests for proposals are excluded from

competing for such procurements. Grantees must assure that no employee, officer, or agent of their organization participates in the selection, award, or administration of any procurement supported by Federal funds if a real or an apparent conflict of interest would be involved.

A conflict of interest could arise when any of the following conditions exists: a) An officer, employee, or agent of the grantee has a financial or other interest in the vendor selected for the procurement. b) Any member of the grantee's officers', employees', or agents' immediate family has a financial or other interest in the vendor selected for the procurement. c) An organization which employs a grantee's officer, employee, or agent, is a vendor or has a financial or other interest in the vendor selected for the procurement.

For the purposes of this program, we consider volunteers of an organization and grant writers to be employees, officers and/or agents of the grantee. As such, grantees must assure that no volunteer or member of their organization or anyone involved in the application for funding participates in, or benefits from, the procurement if Federal funds are involved. Grantees who select vendors that employ volunteers or members of the organization will have to document how they avoided a conflict of interest during their procurement process. Grantees who fail to fully document their purchases may find that their expenditures will be questioned and subsequently disallowed.

Interoperability

Equipment/technology requests should have the goal of solving interoperability or compatibility problems. Therefore, applicants should describe in their narrative sections how the purchase of equipment would comply with standards and/or facilitate solving interoperability or compatibility problems.

[I want to buy radio equipment that all of my neighboring departments use, and there is only one vendor that sells those radios. Do I have to seek other bids or may I use the sole source?](#)

Interoperability is justification for selection of a specific vendor but CANNOT be used as justification to avoid obtaining bids from other sources. You must ensure all procurement actions are conducted in a manner that provides, to the maximum extent possible, open and free competition, and document your choice of vendors in your grant files. Refer to the "*Part VI. Section B. Grantee Responsibilities*" Section, item (5), on page 57 of the 2009 Program Guidance.

In short, interoperability may be a reason to by-pass the lowest bid. It is NOT an excuse to forgo competition.

44 CFR Part 13 references A-110.
The Articles of Agreement references A-110.

OMB Circular

<http://www.whitehouse.gov/omb/grants/attach.html>

Although there are six grant circulars, you are only covered by three of them, depending on type of entity:

States, local governments, and Indian Tribes follow:

- [A-87](#) for cost principles, [Relocated to 2 CFR, Part 225](#) (362k)
- [A-102](#) for administrative requirements, and
- [A-133](#) for audit requirements

Educational Institutions (even if part of a State or local government) follow:

- [A-21](#) for cost principles, [Relocated to 2 CFR, Part 220](#) (384k)
- [A-110](#) for administrative requirements, [Relocated to 2 CFR, Part 215](#) (280k), and
- [A-133](#) for audit requirements

Non-Profit Organizations follow:

- [A-122](#) for cost principles, [Relocated to 2 CFR, Part 230](#) (362k)
- [A-110](#) for administrative requirements, [Relocated to 2 CFR, Part 215](#) (280k), and
- [A-133](#) for audit requirements

Minn. Stat. 471.345 UNIFORM MUNICIPAL CONTRACTING LAW.

Subdivision 1.Municipality defined.

For purposes of this section, "municipality" means a county, town, city, school district or other municipal corporation or political subdivision of the state authorized by law to enter into contracts.

Subd. 2.Contract defined.

A "contract" means an agreement entered into by a municipality for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property.

Subd. 3. Contracts over \$100,000.

If the amount of the contract is estimated to exceed \$100,000, sealed bids shall be solicited by public notice in the manner and subject to the requirements of the law governing contracts by the particular municipality or class thereof. With regard to repairs and maintenance of ditches, the provisions of section [103E.705, subdivisions 5, 6, and 7](#), apply.

Subd. 3a. Contracts over \$100,000; best value alternative.

As an alternative to the procurement method described in subdivision 3, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section [16C.28, subdivision 1](#), paragraph (a), clause (2), and paragraph (c).

Subd. 4. Contracts exceeding \$25,000 but not \$100,000.

If the amount of the contract is estimated to exceed \$25,000 but not to exceed \$100,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof.

Subd. 4a. Contracts exceeding \$25,000 but not \$100,000; best value alternative.

As an alternative to the procurement method described in subdivision 4, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section [16C.28, subdivision 1](#), paragraph (a), clause (2), and paragraph (c).

Subd. 5. Contracts \$25,000 or less.

If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section [16C.28, subdivision 1](#), paragraph (a), clause (2), and paragraph (c).

League of Minnesota Cities

League of Minnesota Cities
145 University Avenue West
St. Paul, MN 55103-2044
(651) 281-1200 (800) 925-1122 Fax (651) 281-1299

LMNC 130B1.3 Competitive Bidding Requirements in Cities

<http://www.lmc.org/media/document/1/competitivebidding.pdf>

Handbook for Minnesota Cities: Ch. 23 - - Expenditures, purchasing and contracts

Published Dec 8, 2009

Statutory regulations and procedures for the disbursement of public funds. Topics include: expenditures, procedure to pay claims, purchasing, sale of city property and equipment, contracts, competitive bidding, purchasing professional services. (Revised 12/2009)

<http://www.lmc.org/media/document/1/chapter23.pdf>

At a minimum, Minnesota cities' normal procurement policy would comply with Minnesota state law. The fire department would work with its city council to follow state law and any additional city requirements for purchases. Independently incorporated fire departments would not be subject to these requirements.

Minnesota requires a sealed bidding procedure for equipment estimated to cost more than \$50,000. State law would only allow quotes on equipment that is estimated to cost \$10,000, but not more than \$50,000. Home rule charter cities in the state may have more stringent and/or additional requirements set out in their charters.

Minnesota law also requires statutory cities to award the contract to the lowest responsible bidder. M.S. 412.311. This may be another exception to the federal lowest-cost contract requirement since it 'part of a grantee's own formal procurement policy'. Determining "responsibility" is in the discretion of the council, and the only guidance on what is "responsible" comes from court decisions where contract disputes have arisen on this issue.

According to the League's *Handbook for Minnesota Cities*, "[C]ourts have interpreted the responsibility of bidders to mean financial responsibility, but also integrity, skill, and the likelihood of performing faithful and satisfactory work. Promptness, for example, is an element of responsibility. When bids on equipment items are not capable of precise specifications, the council may exercise reasonable discretion in determining the lowest bidder. And in so doing, the council can consider the quality, suitability, and adaptability of the article the city is seeking." In addition, "[V]alue does not always depend on price alone. The council may also consider the quality, suitability, and adaptability of the articles. Where plans and specifications demand consideration of several factors and no single bid is lowest in all these factors, the council may decide what weight to give to the various factors and, considering all of them, accept what it deems to be the lowest responsible bid."

In addition to guiding readers to the League's Information Memo on *Competitive Bidding Requirements in Cities* you might also want to mention Chapter 23 of the *Handbook for Minnesota Cities*, which is also on our web site: <http://www.lmnc.org/ResearchAnalysis/handbooktoc.cfm> Material in the two documents is similar but not the same.

I should also note that we are coming up on the end of the 2007 legislative session. There could be changes to the contracting law this session.

The Office of the MN State Auditor

Avoiding Pitfalls - Minnesota's Cooperative Purchasing Venture (CPV)

Vendors sometimes market their businesses by claiming that local units of government can purchase from them without bidding. Vendors may emphasize that they are part of the “state contract” and will sell at the “state contract price.”

Public entities should be cautious before proceeding with these purchases. Public entities cannot avoid the normal bidding requirements simply by purchasing from these vendors. Instead, this exception to the bidding requirements applies only to governmental units that have joined the Cooperative Purchasing Venture, a members-only joint powers program operated by the Minnesota Department of Administration. The Cooperative Purchasing Venture allows members to purchase goods and services under contract terms established by the State of Minnesota, for an annual fee.

More information on the Cooperative Purchasing Venture, and how to become a member, can be found at the following link: <http://www.mmd.admin.state.mn.us/cpv2.htm>

The Office of the State Auditor is located at 525 Park Street, Suite 500, Saint Paul, MN 55103.
Phone: 651-296-2551 Fax: 651-296-4755 Web: www.auditor.state.mn.us