

Capital Resource Conservation and Development Area Council (Capital RC&D) Procurement Policy

Background

This policy applies to purchases of goods and services. Additional guidance for subcontracted services appears at the end of this policy; all subcontracts are governed by the entire Procurement Policy. The Capital RC&D Council receives administrative and program funds from many sources, including Federal funds. Thus, the Capital RC&D Council is required to maintain a federally approved purchasing system. This system must comply with Federal procurement regulations and internal purchasing policies and procedures. From time to time purchases made with Federal funds may be reviewed for compliance with the Federal Acquisition Regulation and 2 C.F.R. Part 230.

General Conditions

In no event may any procurement be made in which there is a real or apparent conflict of interest. A conflict of interest may arise when the procuring Individual or Council has a financial or other interest in the selection of that award. Further, no procuring individual may accept or solicit gratuities, favors, or anything of monetary value from any of the potential awardees.

Further, all procurements must follow "sound procurement practices," which include equal treatment to all prospective sources, maximum open and free competition for every purchase regardless of the dollar value or article or service being sought, the relationship between the purchasing organization and contractor must be an "arms-length business arrangement", both parties have a right to a remedy when one believes they are doing more than its contractual obligation and there are opportunities made for business classified as being socially or economically disadvantaged.

No items shall be purchased that are deemed unnecessary to the duties of employment. In addition, and when practicable and economically feasible, the Buyer should ensure that all products and services conserve natural resources, protect the environment, and are energy efficient. Further, the Buyer should make reasonable efforts to ensure that local firms, small business, minority-owned firms, and women's businesses are utilized.

Applicable Purchases and Procedures

Procurement of goods and services for implementation of a grant or other agreement are governed by the procurement practices of this policy and all requirements of the granting source. All purchases must be part of an approved budget. All purchases of goods and services over \$5,000 must be authorized by the business affairs committee who will determine the need for an RFP.

For routine purchase of supplies and small equipment, the Program Administrator will determine the vendor to routinely use. Annual review of pricing will be made to determine which vendors have the best overall prices for routine purchases.

The Capital RC&D Council is required to retain back-up documentation in the form of a receipt or voucher for all purchases. For any purchase over \$1,000, this backup documentation must include the basis for vendor selection and a justification for lack of competition when competitive bids are not obtained. These requirements will be met by completing the Capital RC&D Council Procurement Form (Attachment A). The form will be completed by the person selecting the vendor and authorized by the Executive Director. The form **must** be attached to the invoice for

the goods or service. Section A and Section B of the Procurement Form cover vendor selection. Section C covers cost/price analysis requirements.

All staff making purchasing decisions are expected to ensure advantageous pricing by soliciting bids/quotes from a minimum of three vendors and to select the lowest bidder **able to meet the requirements**. Bids can be either fixed price¹ or cost reimbursement². The buyer should record the bid/quote results on Section A of the Procurement Form and attach the form and written bids/quotations to the invoice. If the buyer receives only one quote/bid in response to his bid/quote solicitation for bids, indicate the bidder on Section A and complete cost/price analysis Section C (see below) of the attached form.

Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

Consequently, a buyer may be unable or choose not to competitively bid his requirements. These situations involve **selected or sole sources**. A **Selected Source**: alternative vendors exist in the competitive market, but the buyer chooses a particular vendor because of technical requirements (precision, reliability) or past performance by other vendors (poor service, availability of parts). A **Sole Source**: no other vendor capable of fully meeting the requirements exists. The buyer should complete Section B and Section C of the Procurement Form for selected or sole source purchases. The form must be attached to the invoice for payment. In order to use this process one of the following factors must exist;

- 1) The item is only available from one source or selected source);
- 2) There is a public exigency or emergency need for the item that will not permit the delay associated with competitive solicitations;
- 3) The awarding agency authorizes noncompetitive proposals; or
- 4) After solicitation of a number of sources, only one source is able to provide a bid for the level of quality needed

Capital RC&D also requires documentation verifying that the purchase price is fair and reasonable. The buyer must provide documentation of cost/price analysis for all **non-competitive** agreements. Documentation can be based on the price of previous and similar purchases, current price lists, catalogues, advertisements, and negotiated pricing agreements (vendor partnerships). Section C of the Procurement Form lists cost/price analysis options. The buyer should check all that apply.

SUBCONTRACTING GUIDELINES

General Conditions

The Capital Resource and Development (RC&D) Area Council, Inc uses many subcontractors in the course of fulfilling grant requirements. In all cases, however, the procedures of the Procurement Policy must be followed in documenting the reasons for selection of a specific subcontractor.

The Capital RC&D Area Council, Inc has developed the following general conditions regarding non-employee labor:

¹ That is price for all work required for delivery of a product or service.

² Reimbursement on an agreed upon schedule for time and materials.

- 1 Any Labor or contract work by “non-employees” should be of a short-term yet specific nature, and should be able to be performed without supervision or direction.
- 2 Any organizational and/or project work performed by non-employees *must* be directly related to the implementation of the Capital RC&D Area Plan of Work.
- 3 Capital RC&D will use local contractors from within the RC&D service area to the furthest extent possible, and all qualified vendors/contractors will be given equal opportunity to seek contracting work.
- 4 Capital RC&D will file Form 1099-Misc with the IRS for non-employee labor, when applicable.
- 5 The cost for subcontracted work may include overhead costs not exceeding 10% of the total cost of the work, to be subject to individual grant requirements..
- 6 Capital RC&D will not be required to pay any direct fringe benefits for contractors with the exception of benefits required by law.
- 7 All non-employee labor requires a written agreement to be signed by an agent of both parties. For all contracts, RC&D Chair must sign the agreement.
- 8 If a project contract requires a bidding process, a formal bidding process will be used regardless of the subcontractor costs and the Business Affairs Committee will be convened to determine how best to implement the bidding process.

Independent Contract Labor (Short term services from a qualified individual for a specific project and period of time)

The term “independent contract labor” will be used to describe work performed under the following conditions:

- 1 Individual is appropriately qualified for the work,
- 2 Evaluation should be made if the individual service provider should act as a term employee of Capital RC&D instead of a contractor, based on Pennsylvania Department of Labor and Industry guidance.
- 3 Coverage by Capital RC&D workers compensation insurance should also be examined with the insurer.
- 4 Independent contract labor will require no prior approval from the RC&D Board, provided work is part of an approved project. However, a list of short term labor contractors will be provided to the Business Affairs Committee on an every other month basis.
- 5 Written agreement is required (See Attachment B).

Subcontracting (Short term services from a qualified business for a specific project and period of time)

- 1 Individual subcontractor cost will be below \$5,000 in any fiscal year.
- 2 This level of contract labor may require prior funder approval but does not require a formal bidding process to be used.
- 3 A list of subcontractors will be provided to the Business Affairs Committee on an every two month basis.
- 4 Written agreement is required and must be in the form of the standard contract (Attachment C)

Subcontracting (Above \$5,000)

- 1 Individual subcontractor costs will be \$5,000 or above during any given fiscal year.
- 2 This level of expense requires review and approval by the Business Affairs Committee which may require an RFP
- 3 Written agreement is required and must be in the form of the standard contract (Attachment

C)

Attachment A
Capital RC&D Procurement Form

Person Requesting Procurement: _____

Date: _____

Vendor Name: _____

Vendor Address: _____

This is a:

Co-op Agreement

Grant

Contract

Directions for use of this form: Capital RC&D Council prefers competitive bidding for each and every purchase. Please complete Section A. Note if only one bid is received, indicate bidder on Section A and complete Section C. For non-competitive purchases (i.e. sole/selected sources) complete section B *and* C.

Section A

Lowest Competitive Bid (Same item priced differently by several vendors). Record verbal or written quotations below. NOTE: Retain copies of bids/quotations in file for audit purposes.

Vendor A _____ Total Price _____

Vendor B _____ Total Price _____

Vendor C _____ Total Price _____

Section B

If bids were not taken, Select One:

Selected Source (alternative vendors exist, but vendor selection was based on; technical requirements (e.g. precision, reliability, etc.) or past performance of alternative vendors (poor service level, unavailability of parts, etc.). Identify other sources considered and on what basis they were rejected.

Explain: _____

Sole Source (no other company is known to be capable of fully satisfying the requirements set forth).

Explain: _____

SUBMIT ALL VENDOR SELECTION DOCUMENTATION TO CAPITAL RC&D COUNCIL

Section C

Cost/Price Analysis: Select one or more of the following statements to indicate that the bid price was fair and reasonable.

The quoted prices incorporate discounts not available to the general public and reflect substantial savings.

The quoted prices compare favorably to previous prices paid for the same or similar services or items.

The quoted prices were reviewed as part of Capital RC&D's overall proposal by the federal sponsoring agency and were found to be acceptable.

The Vendor has stated that the quoted prices are no greater than those charged to the vendor's most favored customer.

The price was obtained from a current catalogue or standard printed price list.

Other: (i.e. Cost Analysis for project) _____

Authorization: (Required for purchases over \$1,000)

Name: _____

Signature: _____

Date: _____

Attachment B
Capital RC&D - Agreement for Independent Contract Labor

The Capital RC&D Area Council, Inc. agrees to pay \$____.00 per hour for “_____” services rendered by _____. This amount does not include fringe benefits such as insurance and taxes . The _____ is responsible for providing adequate insurance coverage for themself while carrying out the project. A copy of the _____ proof of auto insurance is required with this agreement. Further, Capital RC&D agrees to reimburse for agreed upon expenses listed below. These include:

This is a temporary agreement beginning on _____ and ending on _____.

This agreement does not guarantee any minimum payment, and may be terminated at any time, by either party, for any reason.

Casual labor contractor must provide an invoice including a work log (format provided by Capital RC&D) and detail of any expenses requested for reimbursement, that have previously been agreed upon. Mileage amounts must be documented by Mapquest.com or other similar website. Payment requests must be received on or before _____.

Signature of Capital RC&D Chair:

Printed Name: _____ Title: _____ Chair _____

Signature: _____

Signature of Contractor:

Printed Name: _____ Date: _____

Signature: _____

Mailing Address: _____

Social Security #: _____

Attachment C

SUBCONTRACTING AGREEMENT

**BETWEEN THE
CAPITAL RESOURCE CONSERVATION AND DEVELOPMENT AREA COUNCIL
AND**

THIS AGREEMENT is made and entered into on this _____ of 2011, by and between the Capital Resource Conservation & Development Area Council, Inc. hereafter referred to as "the Capital RC&D," and _____ hereafter referred to as the "Contractor."

I. PURPOSE:

The purpose of this agreement is to secure a working agreement between the Capital RC&D and the Contractor to _____ under Grant/Agreement _____ between Capital RC&D and the _____. The scope of work and budget for this Agreement are described in Attachment A.

II. THE CAPITAL RC&D AGREES TO:

- A. Reimburse the Contractor for reasonable and necessary costs directly related to providing the work described in Section I above and Exhibit 4. The cost for this work shall not exceed \$_____ unless changed by written amendment. The Contractor shall be reimbursed on a monthly basis upon receipt of an itemized invoice and a report of work performed.
- B. Designate individual(s) to serve as liaison between the Capital RC&D and the Contractor with authority and responsibility to include, but not be limited to, the review and approval of changes to the work described in Section I and Attachment A.

III. THE CONTRACTOR AGREES TO:

- A. Perform the work as described in Section I and Attachment A (Work Plan with budget) in a reasonable and timely manner and in compliance with all terms of the Agreement and other applicable laws and governmental regulations.
- B. Submit, on a monthly basis, a report on work performed along with an itemized invoice. The final report and invoice must be supplied to Capital RC&D within 30 days of the end of this agreement.

- C. Retain records and books of accounts related to this agreement for a period of three (3) years after conclusion of the work required of this agreement. If requested by the Capital RC&D, the Contractor shall provide copies of records related to this agreement.
- D. Notify the Capital RC&D in writing of any unusual development or circumstances, which could significantly change or otherwise delay the work described in Section I above.
- E. Perform all services under this Agreement as an independent contractor and not as an employee, agent or joint venturer of Capital RC&D. The Contractor is solely responsible for the manner in which the services are performed, except as to the general direction and reporting set forth above. The Contractor shall determine manner of performance and employees in connection with services and shall provide all necessary tools, equipment and employees in connection with services.
- F. Indemnify and hold Capital RC&D (the board, its officers, agents, and employees) harmless from all claims and liability or otherwise, for death or injury to all persons, or loss or damage to the property of all persons in connection with its performance of work on the project including claims by its employees, subcontractors, agents, suppliers and other third parties.
- G. At all times have and maintain comprehensive liability insurance. The liability insurance coverage required for performance of the Contract shall include the Capital RC&D and its officers, employees, agents and volunteers as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- H. As evidence of the insurance coverage required by this Contract, the Subcontractor shall Furnish Certificate(s) of Insurance to Capital RC&D prior to the award of the Contract and prior to Contractor's commencement of work under this Contract. The Certificate(s) will specify all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). The Contractor shall pay for all deductibles, self-insured retention insurance included hereunder.
- I. To the extent damages are covered by insurance for the purpose of this contract, the Contractor agrees to waive all rights against Capital RC&D and its officers, employees, volunteers and agents for damages and for losses paid under the terms of Subcontractors policy that arises from the work performed by the Subcontractor for the Capital RC&D.
- J. Certify Contractor has not been debarred or suspended under the government-wide suspended and debarment system.

IV. IT IS MUTUALLY AGREED THAT:

- A. The program or activities conducted under this agreement will be in compliance with the nondiscrimination provisions contained in the Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975 and American's With Disabilities Act of 1990. They will also be in accordance with the regulations of the Secretary of Agriculture (7 CFR-15, Subpart A & B), which provide that no person in the United States shall on the grounds of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Agriculture or any agency thereof.
- B. Agreement becomes effective _____ and shall remain effective through _____, unless otherwise terminated in accordance with this Agreement. All invoicing and reporting must be received by Capital RC&D within 30 days of the agreement end date.
- C. This agreement may be modified at any time upon the mutual consent of the parties hereto; either party's giving a thirty (30) day advance written notice to the other party may terminate it. The parties, through an exchange of correspondence, may affirmatively renew this agreement until the purpose of the agreement is complete.
- D. All parties intend to fulfill their obligations cited in this working agreement, but cannot make commitments in excess of appropriated funds authorized by law and administratively made available. If Capital RC&D cannot fulfill the obligations because of lack of funds, this agreement will automatically terminate by mutual consent. If agreement is terminated, Capital RC&D will reimburse the Contractor for related costs incurred as stated.
- E. That the principal contacts for this agreement will be:

Capital RC&D

Susan G. Richards, Executive Director

401 E. Louther St., Suite 307

Carlisle, PA 17013

Phone: (717) 241-4361; Fax: (717) 240-0548

Email: srichards@capitalrcd.org

Contractor:

Phone:

Email:

- F. All provisions of the _____ Grant and Contract are incorporated herein and made part of this Agreement by reference to the extent that such terms are necessary to define the respective rights and obligations of the parties in connection with the performance of the Grant and Contract. Workers Compensation. The Contractor shall obtain and maintain Worker's Compensation for all individuals that will be performing the work per the Contractor for the duration of this contract.
- G. Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively the "Work Product") developed in whole or in part by Contractor in connection with the Services will be the exclusive property of Capital RC&D. Upon request, Contractor will execute all documents necessary to confirm or perfect the exclusive ownership of Capital RC&D to the Work Product.
- H. Contractor, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of Contractor, or divulge, disclose, or communicate in any manner, any information that is proprietary to Capital RC&D. Contractor and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after the termination of this Contract.
- I. This Contract [in addition to the duties outlined in the Capital RC&D grant agreement,] contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.
- J. If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.
- K. This Contract shall be construed in accordance with the laws of the State of Pennsylvania.
- L. Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.
- M. Neither party may assign or transfer this Contract without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

- N. Contracts over \$100,000: Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
- O. For construction projects the following must be included:
- 1 Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)-All contracts and sub grants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti- Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
 - 2 Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)-When required by Federal program legislation, all construction contracts awarded by the recipients and sub recipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a—7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

- 3 Contract Work Hours and Safety Standards Act (40 U.S.C 327-333)- Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

NOW, THEREFORE, intending to be legally bound, the parties have instructed their authorized agents to execute this Agreement.

Capital Resource Conservation & Development Area Council, Inc.	Subcontractor
By:	By:
Title: Chairperson	Title:
Date:	Date: