

Best Practices:

As a discretionary incentive, DED attempts to use the Brownfield Remediation Tax Credit program in a manner that best achieves economic growth for the State while using tax dollars wisely. In determining the amount of tax credits that are appropriate for a particular project, DED considers whether the applicant is using best practices to achieve the best possible outcomes. The Brownfield Remediation Tax Credit program offers these model procurement standards as a means to ensure free and open competition of all professional service providers and contractors that work on Brownfield projects so that any award may be made in an amount reflective of a reasonable market price with workmanship performed by qualified professionals while protecting the integrity of the program through appropriate transparency.

Model Procurement Standards:

Applicability: These procurement standards apply to the following activities:

- (A) Remediation. Activities associated with remediation include, but may not be limited to:
 - i) Environmental consultation.
 - ii) Environmental sampling (pre and post remediation)
 - iii) Environmental inspections (pre and post remediation)
 - iv) Remediation activities (including, but not limited to: demolition, hazardous material removal or containment, asbestos abatement, lead based paint abatement)
 - v) Inspection and supervision of remediation activities
 - vi) Environmental waste hauling and disposal
- (B) Redevelopment. Activities associated with redevelopment including construction, engineering design, construction inspection, and furniture fixtures and equipment ('FF&E').
- (C) Any other eligible costs reimbursable with tax credits.

Types of Procurement: The formality of procurement required varies based on the value and type of good or service. Items may not be split or divided in order to fall under a lesser threshold.

- (A) De minimus purchases. Purchases of goods under \$1000 do not require any bidding.
- (B) Small Purchases. Purchases of goods and services over \$1000 but under \$25,000 may be purchased by obtaining three written offers from vendors. If less than three bids are obtained for any activity, item or service in the Small Purchase category, the Owner provide that information to DED with the application along with a written explanation of the inability to obtain three bids.

(C) Major Purchases. Purchases of goods and services valued at \$25,000 and over should follow a formal bidding process, including advertising for bids (or proposals) and receiving sealed written bids. Invitations to bid on specific purchases should be made to all qualified vendors.

- i) Descriptions of items or services to be purchased in the invitations to bid should be current, clear, and accurate and should avoid specific brand requirements, although brand names may be used as an example of functional or quality requirements as long as "an equal" product is stated as allowed.
- ii) The invitation shall be publicly advertised for a period NOT less than once a week for three consecutive weeks (21 days) with a specific deadline (date, place and time) to allow sufficient time prior to the opening of bids.
- iii) A period of at least seven (7) days should be allowed between the final advertisement and the designated bid opening.
- iv) Bids shall be solicited from an adequate number of known qualified companies in a manner intended to obtain at least three (3) qualified bids. In addition to the newspaper of widest circulation, direct solicitation, trade news and any other means of notification should be employed.
- v) The invitation, including specifications and attachments, must clearly describe the goods or scope of services required, allowing bidders to be responsive to the invitation.
- vi) A standard bid form is required, which identifies quantities (units) by line item activity to allow the bidder to provide unit amounts and totals per line item as well as a total bid price. Any alternative deductible items must also be listed on the bid sheet in the same manner to allow for clear pricing by the bidder.
- vii) The scope of work must be clearly described and delineated in the bid document and must match the activities and processes itemized in the Department of Natural Resources approved RAP. Costs incurred for activities varying from the scope of work in the RAP may be deemed ineligible for Brownfield Remediation Tax Credits. It is recommended that the RAP be provided to potential bidders as part of the bid packet.
- viii) If the salvage rights are to be provided to the Contractor, then the salvage value must be clearly itemized in the bid and the bidder must indicate a reduction in the bid price by that same value.
- ix) The scope of the bids should be considered carefully. Allowing bidders to bid on part of the project will encourage more bidders and tend to create lower costs.

(D) The owner must establish criteria for evaluating the bids prior to issuing the solicitation for bids and prepare a bid tabulation sheet following the receipt of bids comparing the bids based on the established criteria.

(E) Architects and Engineers. Selection of Architects and engineers should be made using a request for qualifications procedure. The pricing for the architect or engineer services may be negotiated after the most qualified bidder has been selected. Evaluation factors for professional services should include at a minimum:

- i) The firm's past experience with similar Brownfield projects
- ii) Recipient's familiarity with the firm
- iii) The firm's availability of staff/capability of staff
- iv) The firm's technical and financial resources
- v) The firm's geographic location
- vi) The firm's ability to complete projects in a timely manner and within budgetary constraints
- vii) The firm's reputation and compliance with public policy

Changes to Bids: Changes to the bid documents after solicitation begins, if any, must be sent to all potential bidders who obtained the original bid documents. Addenda cannot be issued within 72 hours prior to bid opening. If an addendum is required within 72 hours prior to bid opening, the bid opening date shall be extended by at least one week.

Other methods of selection: DED will consider any reasonable and generally accepted method of selection. It is highly recommended that any process that deviates from these guidelines should be approved in advance.

Minimum Qualifications: The bid documents should state the minimum qualifications required to perform the work.

- (A) The inspection of the property, determination of hazardous materials in type and quantity, development and drafting of any RAP, development and drafting of any preliminary cost estimate, development and drafting of any bid specifications and the solicitation of any bids and on-site inspection of remediation and redevelopment work shall be performed by a professional engineer licensed to do business in the State.
- (B) Any inspection of remediation work, including demolition, shall be performed by a professional engineer, licensed to do business in the State.
- (C) Sampling and testing activities shall be performed by licensed individuals and licensed, experienced laboratories. The Department of Natural Resources may also perform similar comparative sampling and laboratory testing to assure compliance and consistency of results.

- (D) The remediation, deconstruction, demolition work shall be completed by experienced firms (licensed where necessary) that maintain the capacity to complete the task and insurance required.
- (E) Waste hauling and disposal be performed by licensed haulers and only to appropriate landfills licensed to receive the applicable waste.

Owner Responsibility:

- (A) The Applicant is the responsible party for assuring the use of successful and compliant procurement process(es) for the project.
- (B) Each award of a contract must be a decision made in writing by the Owner. If any bidders are disqualified or determined to be non-responsive, the reasons for such decision must be included with the bid tabulation sheet.
- (C) While the Owner may procure and contract with a Consultant that assists with procurement and project management activities, the responsibility for the project activities lie with Owner.

Record Retention: Owners must maintain records that document the rationale for the method used for procurement, selection of the contract type, contractor selection or rejection, and the basis for the selection including cost or price. In addition, all contracts other than small purchases shall contain provisions, which describe contractual remedies when contractors violate contract terms.

Contracting:

- (A) Contracts. All procured goods and services (except de minimus goods and services) must be secured by a written contract with the terms and conditions for the parties involved and includes all necessary provisions to ensure performance consistent with state laws and local regulations and provisions necessary to ensure protection of the tax credit investment. Contracts must include but not be limited to: specifications, period of service, scope of services, insurance types and required levels, subcontracting limitations, schedules of payment, retainage, inspections, termination, changes or extras, liquidated damages, correction of work, personnel, assignability, reports and information, records and records access, compliance with local and state laws, licensing, and interest of parties.
- (B) Award of Contract (Low Bid). The Owner/Applicant is not required to contract with the lowest, most responsible and responsive bidder to perform the work. However, the amount of the basis of that bid, including the unit pricing, is the amount at which the Brownfield program will measure and value its participation.

Change Orders:

- i) Written change orders are required for all major goods and services contracts and for professional service contracts when there is any change in the scope or price.
- ii) Change orders must be signed by the contractor and the Owner. DED must be provided a copy of all change orders.
- iii) Change orders should specify any adjustment to time, price, number of units, or cost.
- iv) Any increase in cost not provided in a change order will be considered an ineligible cost. All cost increases must be approved in advance by DED.
- v) Any change in scope that in any way impacts the RAP or any project financing must result in an immediate notification of the Owner, DNR and DED.

Contract Pricing.

- i) All contract prices must be based on a unit price method. All contracts must include a total, not-to-exceed dollar amount. All activities required to complete the remediation of the property must be itemized in the contract and established with unit pricing. No contractor may provide a lump sum by grouping activities together. For example, waste hauling and tipping fees must be separated.
- ii) DED will consider accepting other forms of contracts so long as the State's interests are reasonably protected and such other form of contract is approved in advance.
- iii) Contractor Pay Requests. Contractor Pay Requests become part of the source documentation to access tax credits. All pay requests must be signed off by the Project Inspector and must detail at a minimum, the location of the work, the type of work, the volume of work, the percent of work completed and any other information that may assist the owner, DNR or DED.

Contractor Eligibility:

- (A) No contractor may be used in a project supported by Brownfield Remediation Tax Credits that is currently debarred under local, state or federal law.
- (B) All contractors must be registered with E-verify and attest that no undocumented workers or illegal aliens are employed for any work on a Brownfield Remediation Tax Credit project.
- (C) Contractors Licensed to Do Business in Missouri. No contractor may be used who is not properly authorized to do business in the state of Missouri and the locality of the project.

(D) Businesses in Good Standing with the Secretary of State. All licensed businesses must be in good standing with the Missouri Secretary of State's office.

Additional Costs: It is the responsibility of the Owner to make all efforts to prevent project overruns.

Minority and Women in Business Firms: Owner must document the efforts made to solicit minority and women in business firms for each of the activities supported with Brownfield Remediation Tax Credits. Direct solicitation includes notification by certified mail with return receipts of opportunities to bid.

Hiring Local: Owner should consider methodology to encourage the employment of persons who live within five (5) miles of the project.

Conflict of Interest:

Procurement: The Owner shall not benefit in any way through the procurement of supplies, equipment, construction, and services in a Brownfield Remediation Tax Credit Project nor any person who is an employee, agent, consultant, officer, or any immediate family member or business partner of the Owner unless such person (other than the Owner) received such benefit through a written contract, advertised and competitively bid, and such person was the lowest bid (not lowest and best). Immediate family is defined as husband, wife, son, daughter, father, mother, grandparent, grandchild, stepchild, adopted child, foster child, and wards.

Independence of consultants: Fees and charges by architects, engineers, inspectors, testing facilities, and consultants shall not be eligible costs unless such professionals are non-related parties to the Owner. Two parties are non-related if the professional is an independent contractor, who was retained following an open and competitive process, and who has no financial interest in the Owner's business.

Consistency with Model Standards: These Model Guidelines should be considered as guidelines only. They do not constitute a rule or a policy of general applicability. Compliance with this model is not required. However, Brownfield tax credits are discretionary and DED will include how procurement is to be conducted as a significant factor in the consideration of the amount of tax credits that will be awarded. Applicants who comply with this model would not receive any reduction. Applicants that do not fully comply could have their tax credit award reduced by up to 20%. Each application is judged on a case-by-case basis.