

## **Virginia Land and Water Conservation Fund** **Procurement Procedures for Development Projects**

All LWCF grant project sponsors (referred to in grant agreements and procurement regulations as *subrecipients*) and their contractors, suppliers, vendors, and project equipment and materials are subject to the federal aid procurement requirements of [2 CFR 200.317-327](#), the [Virginia Public Procurement Act](#) (VPPA), and local entity procurement standards. If local procurement standards conflict with state or federal standards, please contact DCR Recreation Grants staff to determine appropriate procedures to follow. Both 2 CFR 200 and the VPPA have allowances that permit a locality to follow certain alternative procurement procedures, such as those typically used for small purchases, but those procedures must be adopted as policies in writing *prior to* the solicitation and procurement.

### **Contracts and Purchases**

Contracts must be awarded to entities licensed to work in Virginia. Contracts must not be awarded to any vendor which is debarred or suspended or is otherwise excluded for or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." Cost plus agreements are not allowed.

Solicitation documentation must contain notice that ***"partial funding for the project is being provided by the Land and Water Conservation Fund of the National Park Service administered in Virginia by The Department of Conservation and Recreation and must be undertaken in accordance with the Land and Water Conservation Fund guidance of the NPS, 2, 36, and 43 CFR, and the Build America, Buy America Acts."***

### ***Design and Engineering Contracts***

Design and engineering (professional services) contracts must be secured by competitive negotiation. Copies of the final RFP, executed contract, response and evaluation summary, and summary of DBE/SWaM efforts must be kept in project sponsor records and available if ever requested for review.

### ***Construction Contracts***

Construction contracts must be secured by competitive sealed bidding. Contracts must be awarded to the lowest responsive and responsible bidder. Federal funding prohibits negotiation with the lowest bidder. LWCF grants are not subject to the Davis-Bacon Act unless required by another project funding source. The procurement should lend itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.

### ***On-Call and/or Previously Procured Contractors***

If the project contains elements or contractors that are part of a procurement that has already taken place, the project sponsor must verify that the applicable state and local procurement procedures were followed. DCR may request documentation of past procurement records, to include: documents listed at the end of this guide as required records for new LWCF procurements, as well as proof of advertisement (a screen shot or report showing that the RFP or IFB was posted in a public location), the letter of award on the contract, and the contract agreement.

### ***Small Purchase Procedures***

Public bodies may utilize methods of procurement other than competitive negotiation or competitive sealed bidding, such as small purchase procedures, if the procedures have been adopted in writing and are in compliance with the allowances in 2 CFR 200 and the Virginia Public Procurement Act. In most circumstances a copy of the adopted small purchase procedures must be submitted to DCR and a minimum of three price or rate quotations must be obtained.

### ***Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms***

In accordance with [2 CFR 200.321](#), all LWCF project sponsors must take affirmative steps to provide small and minority businesses, women's business enterprises, and labor surplus area firms with the maximum opportunity to compete for and perform contracts for projects receiving federal aid. These steps include: placing qualified small and minority businesses and women's business enterprises on solicitation lists, assuring that small, minority businesses, and women's business enterprises are solicited whenever they are potential sources, and passing on these requirements to all contractors letting subcontracts for work funded under the grant.

To locate pertinent contractors, sponsors can utilize the Virginia Small Business & Supplier Diversity Directory at <https://www.sbsd.virginia.gov/directory/> to search for contractors in the general project area and directly send the RFP or IFB documentation to the listed businesses. Alternatively, the sponsor may use the eProcurement Marketplace (eVA) at <https://www.eva.virginia.gov/> and, if firms with these designations have viewed the solicitation, print the list of all businesses that viewed the posting. An additional option is to post the RFP or IFB in a local or regional minority or specialty newspaper.

### ***Buy America Material Sourcing Requirements***

The LWCF program is subject to Build America, Buy America domestic sourcing requirements for permanently incorporated iron, steel, construction materials, and manufactured products ([Infrastructure Investment and Jobs Act \(IIJA\) Section 70914](#)). However, the applicability of these requirements to each project depends on whether the development is classified as infrastructure and whether the project is covered by a waiver based on the federal funding amount:

- For LWCF-funded infrastructure projects with grant award amounts that do not exceed the federal Simplified Acquisition Threshold (currently \$250,000), a small grants waiver issued by the U.S. Department of Interior exempts compliance with domestic sourcing requirements for iron, steel, construction materials, and manufactured products until February 20, 2028.
- LWCF-funded infrastructure projects with grant award amounts above the Simplified Acquisition Threshold (currently \$250,000) must comply with domestic sourcing requirements for all permanently incorporated iron, steel, construction materials, and manufactured products.
  - A de minimis waiver issued by the U.S. Department of Interior exempts up to 5% of the total applicable project costs from domestic sourcing requirements (up to a maximum of \$1,000,000). To use this waiver, projects should still be bid with a domestic sourcing requirement, but if specific materials are found to be unavailable or in very low supply domestically, there is flexibility to select lower cost items up to the maximum waiver amount. This waiver expires on February 20, 2028.

Infrastructure is defined in the IIJA as:

*The term “infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States— (A) roads, highways, and bridges; (B) public transportation; (C) dams, ports, harbors, and other maritime facilities; (D) intercity passenger and freight railroads; (E) freight and intermodal facilities; (F) airports; (G) water systems, including drinking water and waste-water systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; and (K) buildings and real property.*

Construction materials are defined in the IIJA as:

*articles, materials, or supplies that consist of only one of the items listed... (i) Non-ferrous metals; (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); (iii) Glass (including optic glass); (iv) Fiber optic cable; (v) Optical fiber; (vi) Lumber; (vii) Engineered wood; and (viii) Drywall.*

Cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives are not defined as construction materials.

Manufactured products are defined in 2 CFR 184 as:

*Articles, materials, or supplies that have been: (i) Processed into a specific form and shape; or (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.*

The National Park Service recommends including the following statement or similar into bid advertisements:

*This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget’s Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.*

Project sponsors are responsible for ensuring all materials are in compliance with the applicable regulations for their project and that all suppliers and contractors understand and follow these requirements.

Note that Buy America specifically applies to certain federal-aid projects and is different than Buy American, which covers direct federal procurements.

### **Required Document Submissions and Recordkeeping**

Procurement documents must be submitted to DCR for administrative review before proceeding in the procurement process and/or for project file records.

#### ***Administrative Review***

Following must be submitted for DCR administrative review if requested:

- IFB solicitation for construction
- Bid summary sheet or Proposal summary sheets
- Verification or documentation of any procurement of services occurring before project authorization

#### ***Project Records***

The project sponsor **must maintain records** sufficient to detail the history of all procurements. These records should include, but are not limited to: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. These records should be kept so if ever requested by the State or Federal entity or by a Freedom of Information Act request (FOIA), they would be made available within a one week period.

**Project sponsors are responsible for ensuring that all contracts are in compliance with federal and state laws concerning the solicitation of supplies, equipment, and services. When conflicts exist, DCR must be contacted for consultation with the NPS. If any project components or services are not procured per the applicable standards, those expenses will not be eligible for LWCF reimbursement, and the project may be withdrawn and any previous payments received returned to NPS.**