

THE PROCUREMENT

POLICY OF

THE

WESTMORELAND LAND TRUST

WESTMORELAND COUNTY, PA

INTRODUCTION

The spirit in which this procurement system has been developed is to assure that all transactions, regardless of whether they be small purchases, sealed bids, or competitive proposals, shall be conducted in a manner that provides maximum open and free competition consistent with reasonable and prudent practices.

1. Code of Conduct of Officers, Employees, Agents, Committee Members and Board Members

Westmoreland Land Trust shall maintain a written code of standards of conduct governing the performance of its employees, officers, agents, committee members and Board members engaged in the award and administration of contracts.

No employee, officer, Board member, committee member or agent of the Westmoreland Land Trust shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise if any of the following individuals or organizations has financial or other interests in the firm selected for award:

- (a) The employee, officer, Board member, committee member, or agent
- (b) Any member of his/her immediate family
- (c) His or her partner
- (d) An organization that employs, or is about to employ, any of the above.

The Westmoreland Land Trust's officers, Board members, committee members, employees or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or partners to subagreements. Unsolicited items of less than 25 dollars in value or of nominal intrinsic value are not considered to fall within the scope of this restriction.

Violation of the foregoing conflict of interest or gratuities standards by an officer, Board Member, committee member, employee or agent may result in one or more of the following administrative disciplines:

- (a) Oral or written warning or reprimands,
- (b) Suspension with or without pay for specified periods of time,
- (c) Termination of employment,

(d) Possible termination of appointment as a Board member or committee member, or other appropriate disciplinary and corrective action under Section X of the Bylaws of the Westmoreland Land Trust.

These programs shall not be construed as impairing any civil remedies that any government may have against the offending party nor shall they be construed as relieving the offending party of any responsibility if applicable, under federal, state, or local law.

2. Review of Purchase(s)

The Finance Committee with the Treasurer will review purchases to be made so as to insure that there will be no purchases of unnecessary or duplicative items. Efforts will be made to consolidate or break out procurements in order to attempt to obtain more economical purchases. Lease alternatives will also be considered where appropriate.

The Westmoreland Land Trust will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following:

- (a) rational for the method of procurement
- (b) selection of contract type
- (c) contractor selection or rejection
- (d) basis for contractor price

3. Competition

All procurements shall be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- (a) Placing unreasonable requirements on firms or individuals in order for them to qualify to do business.
- (b) Requiring unnecessary experience and excessive bonding – A performance bond and a payment bond representing 100 percent of the contract price will be required on all bid construction contracts and this will not be considered “excessive.”
- (c) Noncompetitive pricing practices between firms or between affiliated companies.

- (d) Noncompetitive awards to consultants that are on retainer contracts (Note: consultants may be retained after competitive evaluation via the Request for Proposal solicitation/scoring/negotiation process.)
- (e) Organizational conflicts of interest.
- (f) 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.
- (g) Any arbitrary action in the procurement process.

When contracting for professional consulting services, geographic locations may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

This Policy will utilize a written evaluation procedure for the selection of contractors where the formal bidding process is not used. This procedure is incorporated into the Program’s Request for Proposal (RFP) format. The number/weighted selection criteria system in the RFP format may be altered to accommodate the contract being solicited.

4. Selection

The following procedural requirements shall pertain to procurements:

- (a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which 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, shall set forth 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 specified features of the named brand which must be met by offerors shall be clearly stated.
- (b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (c) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as

contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

5. **Procurement Methods**

This Policy will utilize one of the four following methods for procuring goods, materials, supplies, construction or services, where these procedures are applicable, namely (a) small purchase procedures, (b) competitive sealed bids/formal advertising, (c) competitive negotiations, (d) noncompetitive negotiation.

A. Small Purchase Procedures

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$1,000.00 in the aggregate.

However, for procurements of services of third party professionals, the competitive proposal method will be used where applicable.

If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

Nothing in this method should be construed as negating the requirements of the Commonwealth of Pennsylvania in its bidding requirements, if applicable.

B. Sealed Bid Procedures

Competitive sealed bids (formal advertising) are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions listed below apply:

- (1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:
 - (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, and selection of the successful bidder can be made principally on the basis of price.

- (2) If formal advertising is used for a procurement under a grant, the following requirements shall apply:
- (a) A sufficient time prior to the date set for opening of bids is determined and bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised as required.
 - (b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for bidders to properly respond to the invitation.
 - (c) All bids shall be opened publicly at the time and place set in the invitation for bids.
 - (d) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience indicates that such discounts are generally taken.
 - (e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

C. Competitive Proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost reimbursement type of contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (a) Request for Proposals will be publicized either from a list of pre-qualified persons or firms or for each individual procurement which ever method is considered appropriate. The formal review either from the pre-qualified list or individual procurement will utilize a Request for Proposal format. Any response to publicized requests for proposals shall be honored to the maximum extent practical.
- (b) Proposals will be solicited from an adequate number of qualified sources.

- (c) The policy will utilize a point system method for evaluating the technical aspects of proposals. Should more elaborate technical review be required the method will be adjusted on a case by case basis.
- (d) Awards will be made to the responsible firm whose proposal is most advantageous to the project, with the price and other factors considered.
- (e) This method may be used for qualifications – based procurement of professional consulting services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used as a procurement of professional consulting service. This should not be interpreted to mean that price cannot be considered a selection factor in the procurement of professional consulting services.

D. Noncompetitive Proposals

Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- (a) The item is available only from a single source;
- (b) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;
- (c) The funding grantor or agency authorizes noncompetitive negotiation; or
- (d) After solicitation of a number of sources competition is determined inadequate.

6. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS AREA FIRMS

When required by federal, state, or other contracts or funding sources, the Westmoreland Land Trust will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

Affirmative steps shall include:

- (a) Placing qualified small and minority business, and women's business enterprises on solicitation lists.
- (b) Assuring that small and minority businesses, and women's business enterprises are solicited wherever they are potential sources.
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- (f) Requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed above.

7. CONTRACT COST AND PRICE

The Westmoreland Land Trust must perform a cost or price analysis in connection with every procurement including contract modifications. The method and degree of analysis must be reasonable and is dependent on the facts surrounding the particular procurement situation. An independent estimate will be made prior to receiving bids or proposals where the use of those estimates is required. A cost analysis will be performed when the offeror is required to submit the elements of its estimated cost, e.g. under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications and change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based in prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

The Westmoreland Land Trust will negotiate profit as separate element of the price for each contract in which there is not price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be

given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates in the surrounding geographical area for similar work.

Cost or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with cost principles applicable to the source of funds.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

8, BONDING REQUIREMENTS

For construction of a facility improvement contract or subcontracts exceeding \$100,000, Westmoreland Land Trust may accept the bonding policy and requirements. If such a determination has not been made, the minimum requirements will be as follows if the laws of the Commonwealth of Pennsylvania are not more restrictive:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

If applicable in accordance with the requirement set forth in the program or grant providing the funds, the following may apply:

- (a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases.)

- (b) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)
- (c) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts award in excess of \$10,000 by grantees and their contractors or subgrantees.)
- (d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair.)
- (e) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5.) (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation.)
- (f) Compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000 and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers.)
- (g) Retention of all required records for three years after Westmoreland Land Trust make final payments and all other pending matters are closed.
- (h) Compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clear Air Act (42 U.S.C. 1857 (h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts or excess of \$100,000).
- (i) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

10. ALTERATIONS

This policy may be modified from time to time to reflect changed federal, state or local requirements.

Adopted by the Westmoreland Land Trust Board of Directors on October 15, 2010.

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Westmoreland Land Trust Score Sheet

Name of Offeror	Technical Qualifications (30 Points Maximum)	Stability of Firm (30 Points Maximum)	Reasonableness of Compensation (32 Points Maximum)	2 Points Each: <ul style="list-style-type: none"> ● Small Business ● Minority Firm ● Women-Business Enterprise ● Section 3 (8 Points Maximum)	Total Points Awarded
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**WESTMORELAND LAND TRUST
REQUEST FOR PROFESSIONAL CONSULTING SERVICES**

In accordance with the existing Policy which establishes standards for the procurement of professional consulting services involving the expenditure of a specifically identified fund source, Westmoreland Land Trust hereby requests proposals from qualified individuals and firms for providing professional consulting services. The selection of an individual or firm will cover the period of _____.

Westmoreland Land Trust proposes to undertake activities with its specifically identified fund source being those funds from _____ (hereinafter known as "Funds") that will require the assistance of professional consulting services firm. These activities will consist primarily of _____.

TYPES OF SERVICES REQUIRED

Westmoreland Land Trust seeks the services of _____ to provide professional consulting services relative to activities that may be undertaken with Funds.

During the period from _____ to _____, the professional consultant may be required to provide the following types of services:

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.
- j.

INFORMATION AND DATA REQUIRED OF EACH OFFEROR

Proposals shall contain responses to the following:

- 1. OFFEROR'S QUALIFICATIONS, EXPERIENCE AND TIME COMMITMENTS OF PROPOSED PROJECT COORDINATION AND TECHNICAL STAFF**

- a. Demonstrate the experience of the offeror in conducting efforts of the nature and scope required by this Request for Proposal.
- b. Identify the key personnel to be assigned to render the service required, and their qualifications. This section of the proposal should identify key personnel that are licensed in the Commonwealth of Pennsylvania.

2. OFFEROR'S EXPERIENCE AND STABILITY

- a. Demonstrate the stability and continuity of offeror's staff and management.
- b. Demonstrate offeror's understanding of the requested professional consulting services required by the Westmoreland Land Trust.

3. SMALL, MINORITY, WOMEN'S BUSINESS ENTERPRISE, AND SECTION 3 FIRMS PARTICIPATION

If the offeror qualifies under any of the following four (4) categories, the offeror shall set forth the basis so that the Westmoreland Land Trust can determine which category or categories are applicable to the offeror.

- a. Small Business Firm
- b. Minority-Owned Business Firm
- c. Women-Owned Business Firm
- d. Section 3 Business Firm

4. BASIS FOR COMPENSATION

The Westmoreland Land Trust will negotiate a fee for the individual services as required. The offeror must present a range of fees and signify a willingness to negotiate a contract with a not to exceed figure. The offeror may suggest a lump sum form of compensation, an hourly rate form of compensation or a combination of lump sum and hourly rate compensation. Hourly billing rates for each individual to be assigned to the project must be included in the proposal.

FACTORS FOR AWARD

Westmoreland Land Trust will evaluate each written proposal, determine whether oral discussions with the offeror are necessary, then based on the content of the written proposal and oral discussions will assign points for each segment of the proposal in accordance with the criteria hereinafter set forth. The offeror with the highest total points for such service will be selected for purposes of negotiating a contract. If a contract cannot be negotiated successfully with the highest rated offeror, negotiation will be

with the next highest rated offeror and so on until a successfully negotiated contract can be concluded.

1. OFFEROR'S QUALIFICATIONS, EXPERIENCE AND TIME COMMITMENTS OF PROPOSED PROJECT COORDINATION AND TECHNICAL STAFF (30 points)

- a. Demonstrated ability of the Project Manager to carry out the project's consulting responsibilities (10 points)
- b. Demonstrated ability of other specifically named key personnel to carry out the proposed assignment, including prior experience in performing such assignments (10 points)
- c. The adequacy of the proposed level of effort in terms of time commitment, of Project Manager and key personnel (10 points)

2. OFFEROR'S EXPERIENCE (30 points)

- a. Demonstrated experience and capability of the offeror's coordinating efforts of the nature and scope of similar work (15 points)
- b. Demonstrated experience and capability of the offeror in providing stability, continuity and responsiveness of both staff and management (15 points)

3. REASONABLENESS OF COMPENSATION (32 points)

- a. The offeror must include a statement of intent to negotiate a lump sum contract amount with Westmoreland Land Trust. A proposed fee charge shall be stated in the proposal.

4. PARTICIPATION BY SMALL BUSINESS, MINORITY-OWNED, WOMEN-OWNED, AND SECTION 3 FIRMS (8 points)

- a. Any offeror who meets any one (1) of the following factors shall receive two (2) points up to a maximum of eight (8) points:
 - (1) Small Business Firm
 - (2) Minority-Owned Business Firm
 - (3) Woman-Owned Business Firm
 - (4) Section 3 Business

Scoring Key

Per cent of points awarded

0% -	No response
50% -	Marginal
70% -	Acceptable
80% -	Occasionally exceeds acceptable
90% -	Consistently exceeds acceptable
100% -	Outstanding in all respects