

A Fire/EMS/Safety CENTER PUBLICATION



Minnesota
STATE COLLEGES
& UNIVERSITIES

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

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**Minnesota State Colleges and
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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.

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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 accept the lowest bid from vendors for the AFG program.

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.).

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

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B. Overarching Funding Priorities.

The funding priorities for the FY07 AFG reflect the Department's overall investment strategy, in which three priorities are paramount: enhancing national capabilities, risk based prioritizations, **and interoperability**.

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Appendix 1

Priorities and Allowable Expenses For Fire Departments

AFG funding priorities differ for fire departments and nonaffiliated EMS organizations. Please read the guidance document with this in mind and make sure you are researching the appropriate sections for your organization. Equipment requested under AFG must meet all mandatory regulatory requirements, as well as any national and/or DHS-adopted standards in order to be eligible for purchase with grant funds. The Responder Knowledge Base (RKB), which can be accessed at <http://www.rkb.mipt.org/>, includes relevant information on first responder standards and allows "guest users" to ask any questions they may have on applicable standards.

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.

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(5) Ensure all procurement actions are conducted in a manner that provides, to the maximum extent possible, open and free competition. In doing so, 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.

Appendix 7 Excess Funds

Occasionally, due to successful competitive **bid processes**, some grantees have funds remaining after the completion of the obligations outlined above. Fire department grantees that complete the approved scope of work prior to the end of the performance period, and still have grant funds available, have three options for the use of the excess funds. See full appendix for details.

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:

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 Competitive bidding threshold The competitive bidding threshold for all cities, regardless of size, is \$50,000.

League of Minnesota Cities

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LMNC 130B1.3 April 2005 Competitive Bidding Requirements in Cities <http://www.lmnc.org/pdfs/LMCRResearchMemos/CompetitiveBidding.pdf>

The Handbook for Minnesota Cities also has information on contracting and that has been revised through the 2006 legislative session. Contracting information is found in Chapter 23:
<http://www.lmnc.org/handbook/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 State Auditor

Avoiding Pitfalls - Cooperative Purchasing Venture

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: www.mmd.admin.state.mn.us/cpv2.htm.

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