

## Getting and Managing a Construction Grant

Even if your project qualifies for funding, are you ready to take on the challenges?

*By Henry Flood*

Your clinic's facilities are 60 years old and no longer meet the local safety codes. Your town needs a new fire station to house its expanding fleet of fire trucks. Your city's wastewater treatment system has sprung a leak and urgently needs to be modernized.

Will Uncle Sam come to your aid?

Government grants for construction or renovation may not be as plentiful as they once were, but all of these projects- and others like them- may be eligible for federal dollars.

Today, most federal construction grants and loans are based on four main criteria:

- **Community social and economic need.** Distressed areas may qualify for construction dollars from the Department of Housing and Urban Development, Department of Health and Human Services, Department of Education, Economic Development Administration, Department of Agriculture Rural Development, Environmental Protection Agency, and Federal Emergency Management Agency (now part of the Department of Homeland Security)
- **Mitigation of imminent threat to community health and safety.** For example, if there are scientifically validated threats to the water supply or if there are threats of waste contamination, a community may be eligible for grants to support water or wastewater system construction, renovation or extension of those systems.
- **Program-related eligibility.** Several federal programs will fund renovations, retrofitting and even new facilities construction in order to meet client service needs related to health care delivery, substance abuse services, assisting the homeless or improving medical research.
- **Disaster recovery.** Natural disasters such as floods, hurricanes and tornados will trigger the release of federal assistance to repair, replace and renovate essential facilities.

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When researching federal construction funding, consider how your circumstances might satisfy one or more of these broad funding criteria.

Even if you discover that federal dollars are indeed available, however, make sure you understand all that's involved when your organization or community accepts a federal grant or loan. When you take federal funds, you will have to abide by Davis Bacon wage requirements as well as a host of compliance regulations, all of which can drive up your costs by as much as 20 or 30 percent. If your state does not have prevailing wage laws, you may be better off seeking a long-term private loan. You'll still have to comply with the prevailing health, safety and construction codes, but your total costs may be lower.

In addition, anyone who decides to seek federal construction funding must be prepared for a long, multi-phase process. This includes the preparation of a detailed application (and in many cases, a pre-application as well); bid solicitation, evaluation and contractor selection; managing the actual construction; and project close-out.

## **Pre-Application and Application**

Many funders require a pre-application before they will invite a full application for construction grants. The pre-application is meant to weed out projects that are not feasible; fail to meet the funder's "need" criteria; fail to pass initial environmental review; or are unrealistic with respect to estimated cost.

A proposed project will be rejected as infeasible if it is not supported by some measure of professional expertise from an architect and engineer. A preliminary A\E report will usually satisfy this requirement.

"Need" factors—such as unemployment, poverty, or threat to health and safety—are often used to trigger basic eligibility for funding. If these factors must be demonstrated, statistical or other evidence will be required.

Applicants are always asked a series of environmental screening questions to determine whether the proposed project will have an impact on the environment that might disqualify it from funding consideration. For example, you cannot carry on construction activity in a flood plain or coastal barrier or mudslide area. Nor can you undertake construction in areas that

are designated as historic or cultural sites without special permission or without making mitigating changes.

Your estimated costs to carry out the project must be realistic, current at the time of submission, within the funding range permitted and exclusive of ineligible costs. How can you know that your proposed costs are realistic and current? Architect-engineering firms generally have cost estimation personnel who draw up construction estimates based on industry cost data and the general scope of work. Most of these firms produce reliable cost estimates but sometimes they do not. If your project is likely to be complex or cost more than \$750,000, it's advisable to enlist the help of a professional cost engineer—someone who makes their living exclusively by estimating construction costs.

Categories of eligible cost differ from funder to funder. In a construction proposal, you must show how all necessary project costs will be funded both eligible costs and ineligible costs. Standard Form 424-C is designed to disclose eligible, ineligible and total project costs. For example, if legal, contingency or design costs are not eligible for funding from the particular source to which you are applying, you must show that you or another funding source will be covering these costs.

A typical pre-application package will be from 10-40 pages in length and will contain the following:

- Standard Form 424 (application, or a variant)
- Standard Form 424-C (construction budget, or a variant)
- Line item budget showing federal and all match shares (1-2 pages)
- Project summary (1 page)
- Need statement (1-2 pages)
- Project description (1-3 pages)
- Preliminary A\E report (5-20 pages)
- Responses to environmental checklist and special explanations where necessary
- Standard Assurances (2 pages)
- Required or optional exhibits

If your pre-application is well prepared, properly documented, and makes it to the funder's priority list, you will likely be invited to submit a full application. Costs listed in a pre-application are not supposed to be binding for the full application stage, but you must still be very careful when you

calculate them. All too often, pre-application dollar figures end up being the ones that you will have to live with.

It usually takes 30-90 days for pre-application approval and another 90-120 days for full application approval, so keep that in mind when making your cost forecasts. In addition, if permitted by the funding source, add in a five-percent contingency.

The full application will contain many of the same items that were included in the pre-application, plus some new items as well as a more detailed description of the scope of your project. A typical full application package contains:

- Standard Form 424 (application, or a variant)
- Standard Form 424-C (construction budget, or a variant)
- Line item budget showing federal and all match shares (1-2 pages)
- Revised project summary
- Revised need statement
- Revised detailed project description
- Detailed project schedule
- Revised preliminary (or more detailed) A\E report
- Preliminary design
- Level I Environmental Assessment or more detailed responses to environmental checklist and special explanations where necessary
- Standard Assurances (2 pages)
- Local, state, regional and other planning and permit documentation
- Legal, minority and civil rights documentation
- Required or optional exhibits.

## **Before Starting Construction**

You got the grant. Now what?

The first thing to remember is that the recipient organization, and not its hired "experts," bears legal responsibility for all aspects of the approved project. If you are acting as the project manager, you must:

- Study all documents sent by the funding source. Typically these include the award letter, the grant or loan agreement, the approved

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budget, any special conditions, grant administration and cost rules, and the project handbook that tells you what you must do to carry out an approved construction project.

- Assemble your project management team. This is not a time to be flying solo. Your project team consists of you, the architect, the engineer, your accountant, your attorney and representatives of those who will actually use the facility being built. Everyone must be briefed on the project requirements.
- Attend the funder's project meeting. Construction is a complex matter and many funding sources will require you to attend a project requirements meeting. You and your team need to be present. These meetings are almost always informative; they're an opportunity to answer questions and clarify anything that you do not understand. Document the meeting in writing and ask the funder to approve all major changes or matters of clarification in writing. The responses you receive are binding only if they come from your project officer or a grant administration specialist.

Review design plans and specifications. If your approved project includes funding for design plans and specifications, these documents must be reviewed carefully to determine that all are in compliance with your grant agreement and the accompanying project requirements. The funding agency will usually require pre-approval of these items if costs exceed \$100,000. Where pre-approval is mandated, you cannot bid a project without funding source approval.

## **A/E Contracts**

Architect and engineering contracts may also be subject to funding source review and approval. Most A\E contracts are solicited as consultant agreements under state or federal negotiated selection procedures. These procedures are often referred to as Brooks Act selections, named after the federal law that governs selection of architect-engineers for federally funded construction project design.

Organizations that do not have internal A\E staffs may have architect\engineers on retainer. Firms on retainer are usually more than happy to help with a funding pre-application. It's an opportune way for them to lock themselves into the project design and construction supervision work. Keep in mind, however, that this practice discourages competition. It runs

counter to the procurement competition requirements of the Common Rule, applicable to state and local governments and Indian tribes and the requirements of OMB Circular A-110, applicable to colleges, universities and nonprofit organizations.

The reality is that firms on retainer do win most of these contracts as a result of their early participation in the project formulation. Funders have been reluctant to challenge retainer arrangements, but they clearly have the authority to do so. Therefore, you should take care to abide by the rules and properly advertise A\E contracting opportunities. It is not worth the risk of having your A\E contract disapproved or costs disallowed for non-compliance.

A typical A\E selection process involves the following steps:

1. Your organization publishes a request for qualifications, together with a summary statement of the project.
2. A\E firms submit their general firm qualifications together with a statement of their qualifications to provide professional A\E services for your specific project.
3. Your organization rates and ranks each proposal and develops a rank order list from first to last.
4. A short list of three to five firms is developed and representatives of those firms are interviewed.
5. Negotiations are initiated with the top-rated firm and a contract is written. If negotiations with the top firm fail, the next highest rated firm is approached for negotiation and award.

There are standard forms for entering into agreements with architects and engineers. Also, there are statutory and regulatory limits on A\E fees. Do not approve agreements that exceed what the laws or regulations permit. In general, A\E fees may not exceed six percent of construction costs.

There is no foolproof method for selecting A\E firms, but there are ways to screen for suitability. For example:

- Ask for references and talk to each reference given.

- Check with professional associations such as the American Institute of Architects (AIA), National Society of Professional Engineers (NSPE), and American Consulting Engineers Council (ACEC) regarding firm reputation or complaints.
- Have your attorney check each firm for litigation history.
- If possible, have a professional architect or engineer sit as a member of the selection committee.
- Ask tough questions about the firm's cost estimation skill and its track record for keeping projects on budget and within schedule.
- Trust your gut. If something sounds fishy during the interview, or if the firm seems aloof instead of client-centered, look elsewhere.

It is important to select the A\E firm with care. A poor design means poor construction. If the firm has a weak track record in project supervision, serious mistakes in construction are inevitable.

At the same time, remember that you are one client among many. A\E professionals are required only to use their best efforts to supervise the design and construction of your facility. For projects costing more than \$1 million, a resident project inspector—who reports to you and not the A\E firm—should be hired to protect your interests as the funding recipient and client. The cost for this service is well worth it. Most funding sources will allow these costs but even if they do not, consider self-funding for this valuable protection.

Once your A\E firm has been formally selected, here's what you can expect it to do for you:

- Attend the initial and interim project meetings
- Prepare the preliminary and final project design plans and help you get them approved
- Make any design plan changes mandated by the funding source
- Prepare the approved set of plans and specifications for bidding
- Advertise the bids on your behalf
- Conduct a technical review of all bid responses and tabulate the bids
- Appear at the bid opening and supervise the bidding process along with your attorney or a senior manager familiar with conducting bid openings
- Recommend acceptance or rejection of bids
- Advise you regarding bid disputes and actual or potential matters in protest

- Approve materials, supplies and as-built drawings
- Review and recommended approval or rejection of change orders
- Supervise construction
- Secure contractor and sub-contractor compliance with the construction plans and specifications (although the prime contractor is responsible for work performed by sub-contractors) Review initial, interim and final construction invoices
- Recommend approval or disapproval of substantial completion documents, completion punch lists, releases of liability and insurance and bonding documents.

## **Bidding the Project**

Once you have a fully approved set of biddable documents, your retained architects and engineers are technically responsible for bidding the documents to construction firms, but you, as the funding recipient, are legally responsible for the bid outcome. The A\E firm together with your attorney recommends the lowest responsive and responsible bidder.

The bidding process usually begins with a pre-bid conference, conducted by the A\E firm and attended by your attorney and project management staff. Bidders who requested the bid documents from the advertisement will show up to ask questions, point out potential errors or oversights and raise any issues that may be protested.

The results of the pre-bid meeting must be carefully documented. The A\E firm is responsible for issuing any bid addenda resulting from the pre-bid conference.

On the day of bid opening, your A\E firm, your attorney, and a representative from your organization open and announce each bid without discussion. The bids are tabulated by the A\E firm and the apparent low bid is announced. Late and incomplete bids are disqualified and listed as such.

There is a reason why the apparent low bidder is announced as such at the bid opening. The winning bid must be fully evaluated together with other acceptable bids on the bid abstract. The bid pricing of the apparent low bidder must be carefully checked for accuracy, errors and conformance with the bid documents. In addition, the bidder's insurance and bonding must be carefully verified and validated.

The winning bidder is the "responsive, responsible" firm whose bid is lowest according to the contract terms and. "Responsive" means that all items are responded to in the bid. "Responsible" means that the firm is financially, ethically and legally sound and acceptable with respect to insurance and bonding.

There is usually a delay between selection of the winning bid and the notice to proceed. During this interval it is imperative that you and the A\E firm reconfirm the winning bidder's bonding and insurance. Construction firms have been known to do funny things with their bonding and insurance after winning a bid and signing the contract.

How do you know if the bonding and insurance are still good? Insurance information is relatively easy to check through a local agent and the insurance company. It is also relatively easy to validate bonding. Make sure the firm's surety is on the list of federally accepted sureties. This list appears annually in the Federal Register. If the surety is not on the Federal Register list, proceed with caution. The firm's bond may be worthless if performance problems arise.

Some firms—especially minority and 8-A certified firms—may present certificates of competency or Small Business Administration (SBA) bond guarantees. These must be carefully evaluated. SBA can help answer questions about such documents.

Only when the bid and all supporting documents are in order is it appropriate for you and the A\E firm to issue a notice to proceed. This is usually done ten days prior to the expected start of construction activity, so that the contractor has time to mobilize equipment and personnel.

## **Managing a Construction Grant**

With your A\E team in place and a resident project inspector at the site daily, you may be tempted to put your own oversight on cruise control. Wrong!

As a project manager you are still responsible for the usual tasks associated with every federal grant, including quality review. In addition, you are

legally responsible for ensuring that your construction project is completed on time, within the approved budget and in compliance with the terms and conditions of the grant award and contract documents.

The project manager must carry out a broad range of tasks that include:

- Managing the A\E procurement and selection process
- Working with other experts to perform environmental assessments and documenting their outcomes
- Drawing down project funding
- Tracking funds obligation and expenditures
- Reviewing and approving A\E billings
- Presiding or participating at pre-bid, pre-construction and construction progress meetings
- Reviewing and approving construction billings
- Seeking approval from the funder for project or budget changes
- Reviewing and, if necessary, acting on recommendations in A\E and resident project inspector site reports
- Review of Davis Bacon wage statements and wage decisions
- Monitoring construction payrolls for compliance with the contract and Davis Bacon prevailing wage rates
- Securing final approval of design plans and specifications from the funding source, if required
- Securing approval of the A\E contract from the funding source, if required
- Hearing and resolving bid protests and/or disputes that might arise at the solicitation, bid, or performance phases of the project
- Periodic review of insurance and bonding
- Countersigning the punch list and certification of substantial completion of construction activity
- Signing releases and project closeout documents.

It is especially important for the project manager to track the obligation and expenditure of funds awarded. There is usually lag time between the obligation and expenditure of project funding, so you must always monitor the cumulative total of A\E and construction billings and compare them to funds drawn down, obligated and expended. Otherwise, you could end up overspending line items or the total authorized budget.

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