

Procurement for Goods & Services

CDBG/HOME Guidebook



Section E

Overview

The purpose of procurement requirements is to ensure that services and materials are purchased as efficiently and economically as possible, and to ensure compliance with applicable federal law.

Procurement Applicability:

- Organizations who receive **CDBG funding or HOME funds as a subrecipient** (not as an owner/sponsor/developer) are subject to requirements in **2 CFR part 200.320** and detailed below in part A.
- Projects receiving **HOME for development by an owner/sponsor/developer**, are not subject to requirements under 2 CFR Part 200 but must follow a procurement process as outline in part B.
- **Other Requirements** - Conflict of Interest, Build America Buy America, Section 3, Davis Bacon, Excluded Parties and Contract Retainage requirements are outlined in part C.

A. CDBG and HOME Subrecipient

General Procurement Provisions

Any grant recipients using federal funds to purchase goods or services must have written procurement procedures in place (2 CFR Part 200.319(c)). Whether you are a small agency purchasing occasional office supplies or a large organization contracting for millions of dollars of construction services, the requirements governing the purchasing process are designed to ensure that you:

- Follow a **free and open competitive process** in securing those products or services.
- Properly **document** your purchasing activities and decisions.
- Observe the special **rules for particular kinds of purchases** (small purchases, competitive sealed bids, competitive proposals, and sole source procurements).
- **Properly bond and insure** work involving large construction contracts and/or subcontracts.
- Use **local businesses** and contract with **small, minority and/or women-owned businesses** to the maximum extent feasible.

The essence of good procurement can be summarized as follows:

- Identify and clearly specify standards for the goods or services your organization wants to obtain;
- Seek competitive offers to obtain the best possible quality at the best possible price;
- Use a written agreement that clearly states the responsibilities of each party;
- Keep good records; and

- Have a quality assurance system that helps your organization get what it pays for.

Solicitations must clearly explain all requirements that the bidder/offeror must fulfill in order for his or her bid/offer to be evaluated by the organization. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured, and cannot contain features which unduly restrict competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- Placing unreasonable qualifying requirements on firms.
- Requiring unnecessary experience and excessive bonding.
- Specifying only “brand name” products instead of allowing “an equal” product.
- Noncompetitive pricing practices between firms or affiliated companies.
- Noncompetitive awards to consultants on retainer contracts.

Methods of Procurement

There are several methods of procurement that are identified in federal regulations (2 CFR Part 200):

Micro-purchases

Small purchase procedures

Formal procurement methods including:

- Sealed Bids
- Competitive proposals; and
- Non-competitive proposals

I. Micro-purchase

The micro-purchase procedures allows the purchase of supplies or services totaling **no more than \$10,000**, using a simplified acquisition procedure.

II. Small Purchase Procedures - \$10,000 to \$250,000

The small purchase procedures applies to purchases over \$10,000 and under \$250,000 (the current simplified acquisition threshold) and allows recipients to acquire goods and services without publishing a formal request for proposal or invitation for bid.

- a. This method of procurement is typically used to purchase commodities such as supplies, equipment or other materials. The process is relatively simple, informal and does not necessarily involve competitive sealed bidding.
- b. Under the small purchase method, a grant recipient would send a request for quotes to potential vendors with a detailed description of the goods or services needed. In return, they receive competitive written quotations from an adequate number of qualified sources. A minimum of *three* competitive price quotes should be obtained.

- c. The small purchase method can also be used to acquire eligible types of services, such as professional consulting, environmental review, or planning. In general, the small purchase procedures should not be used to acquire construction contractors. It is recommended that these occur under the sealed bid approach.
- d. No cost or price analysis is required.

III. Formal Procurement Methods - \$250,000 or greater

A. Sealed Bids

Sealed bids (Formal Advertising) should be used for all construction contracts or for goods costing more than \$250,000.

1. Competitive sealed bidding requires publicly solicited sealed bids and a firm-fixed-price lump sum or unit price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.
2. In order for sealed bidding to be feasible, the following minimum conditions must be present:
 - a. 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 work.
 - c. The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can appropriately be made principally on the basis of price.
3. When the competitive sealed bid process is used, the following requirements apply:
 - a. Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - c. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

- e. Any or all bids may be rejected if there is a sound documented reason.

B. Competitive Proposals

Competitive proposals are used when the total costs will exceed \$250,000 and conditions are not appropriate for the use of sealed bids such as to purchase professional services. They are awarded in accordance with the following requirements:

- a. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- b. The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
- c. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
- d. The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror 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 in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

When Competitive Proposals are utilized, the following requirements apply.

- a. Publication Period: Proposals must be solicited from an adequate number of qualified sources and an advertisement must be published. RFP's/RFQ's should be published in a sufficient timeframe before they are due.
- b. Clear Definition: The RFP/RFQ must identify the general scope of work and all significant factors of evaluation, including price where appropriate, and their relative importance.
- c. Technical Evaluation: A written method for technical evaluation of the proposals received, determinations of responsible offerer and the selection for contract award should be established.
- d. Award: Award must be made to the responsible offerer whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly. The contract can be either a fixed price or a cost reimbursement type.

IV. Non-competitive Proposals (Sole Source)

Non-competitive procurement should only be used when the award of a contract is infeasible under the other procurement methods and one of the following circumstances applies:

- a. The item is available only from a single source;
- b. Where a public emergency or urgent situation is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods; or
- c. Where after solicitation of a number of sources, competition is determined inadequate.
- d. The Block Grant Program, as the Federal awarding agency, expressly authorizes noncompetitive proposals in response to a written request from the subrecipient.

Bonding

For construction or facility improvement contracts or subcontracts exceeding \$150,000, subrecipients are required to have adequate bonding policy and requirements. The minimum requirements are as follows:

- A **bid guarantee** from each bidder equivalent to **5% of the bid price**. The “bid guarantee” must 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 the bid, execute such contractual documents as may be required within the time specified.
- A **performance bond** on the part of the contractor for **100% 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.
- A **payment bond on the part of the contractor for 100% 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.

Bid and Contract Language

Bid packages and agreements made for professional services or construction **must contain certain language to comply with federal regulatory requirements**. The Block Grant Office will provide a Bid and Contract Requirements checklist that is specific to your project.

B. HOME - Owner/Sponsor/Developer Requirements

HOME funds awarded to owner/sponsor/developers for rehabilitation or construction of housing are not required to follow the procurement requirements of 2 CFR Part 200. However, in order to ensure project costs are reasonable and to meet requirements for HOME funds your organization should have written purchasing policies and procedures that address:

- A free and open competitive process to obtain the best possible quality at the best possible price including a process to ensure costs are reasonable for the type of project.

- Use of local businesses and contracting with small, minority and/or women-owned businesses to the maximum extent feasible.
- Proper documentation of your purchasing activities and decisions.
- Use of a written agreement that clearly states the responsibilities of each party;
- A quality assurance system that helps your organization get what it pays for.
- Bonding and insurance for contractors and work performed.

Bid and Contract Language

Bid packages and agreements made for professional services or construction **must contain certain language to comply with applicable federal regulatory requirements such as Build America Buy America, Section 3 and Davis Bacon**. The Block Grant Office will provide a Bid and Contract Requirements checklist that is specific to your project.

C. Other Requirements

MBE/WBE Outreach

To encourage small minority and women’s business enterprise participation, contractors are encouraged to take actions that would increase opportunities for small and minority businesses and women’s business in subcontracting. Affirmative steps include, but are not limited to:

- Placing qualified small and minority and women’s business enterprises on solicitation lists;
- Assuring that these firms are solicited whenever they are a potential source;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirement permits, which encourage participation by these firms;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Dept. of Commerce.

Competitive Proposal Outreach

Agencies are encouraged to submit RFQ/RFP or bid documents to locations which will best reach potential bidders. The following plan centers may be helpful:

Seattle Daily Journal of Commerce <http://www.djc.com/cust/IntroPages/JobsIntro.php>
Contractor Plan Center, Inc. <http://www.contractorplancenter.com/>

Conflict of Interest

Conflict of Interest covered by 2 CFR 200 provisions:

In the procurement of property and services by CDBG and HOME subrecipients the conflict-of-interest provisions at 2 CFR 200.318 must be followed. These regulations require subrecipients to maintain written standards governing the performance of their employees engaged in awarding and administering contracts. At a minimum, these standards must:

- a. Require that no employee, officer, agent of the grant recipient shall participate in the selection, award or administration of a contract supported by CDBG or HOME if a conflict-of-interest, either real or apparent, would be involved;
- b. Require that employees, officers and agents of the grant recipient not solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements; and
- c. Stipulate provisions for penalties, sanctions or other disciplinary actions for violations of standards.

A conflict would arise when any of the following has a **financial or other interest** in a firm selected for award:

- A employee, agent or officer of the organization;
- Any member of an employee's, agent's or officer's immediate family including partner; or
- An organization that employs or is about to employ an employee, agent or officer of the grant recipient.

Activities covered by HOME regulations:

1. In cases not covered by 2 CFR Part 200, the HOME regulations at 24 CFR 92.356 governing conflict-of-interest apply. These provisions cover employees, agents, consultants, officers and elected or appointed officials of the subrecipient. The HOME regulations state that no person covered who exercises or has exercised any functions or responsibilities with respect to HOME activities or who is in a position to participate in decisions or gain inside information:
 - a. May obtain a financial interest or benefit from a HOME activity; or
 - b. Have an interest in any contract, subcontract or agreement for themselves or for persons with business or family ties.
2. This requirement applies to covered persons during their tenure and for one year after leaving the organization.
3. The HOME Final Rule includes a provision which states that no owner, developer or sponsor of HOME-assisted housing, including their officers, employees, agents, consultants, elected or appointed officials, or immediate family members (of either the owner, developer, sponsor or officers, employees, agents, elected or appointed officials, or consultants), may occupy a HOME-assisted unit in a development. This provision **does not** apply to:
 - a. An individual receiving HOME funds to acquire or rehabilitate his/her principal residence, or
 - b. An individual living in a HOME-assisted rental housing development where he/she is a project manager or a maintenance worker in that development.

Build America Buy America Act (BABA)

Capital construction projects shall meet the requirements, where applicable, of the Build America, Buy America Act, included in the Infrastructure Investment and Jobs Act signed into law on November 15, 2021, Pub. L. No. 117-58 §§ 70901-52. **The Act requires the following Buy America preference for projects of more than \$250,000 (all funds, not just CDBG or HOME funds).** If total project cost does not exceed the simplified acquisition threshold value of \$250,000, then BABA does not apply.

BABA Applicability:

- a) **Iron and Steel (FY 2023 CDBG Funds and later, HOME obligated by HUD Aug. 23, 2024 or later):** All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b) **Construction Materials (FY 2024 CDBG Funds and later, HOME obligated by HUD Aug. 23, 2024 or later):** All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States. Excludes cement and cementitious materials, aggregate such as stone, sand, or gravel, or aggregate binding agents or additives. Specifically listed materials depend on the year of funding:
 - a. **2024 CDBG Funds or later:** includes metals other than iron or steel, lumber, composite building materials (including polyvinylchloride and polymers used in fiber optic cables), plastic and polymer-based pipe and tube.
 - b. **2025 CDBG Funds or later:** includes glass (including optic glass), drywall.
- c) **Manufactured Products (FY 2025 CDBG Funds and later, HOME obligated by HUD Aug. 23, 2024 or later):** Manufactured products include articles, materials, or supplies that have either been:
 - Processed into a specific form or shape, or
 - Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

BABA does not apply to tools, equipment, and supplies such as temporary scaffolding, brought to the construction site and removed before the completion of the project. Nor does the Act apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished project, but are not an integral part of the structure or permanently affixed to the project.

Contract Retainage

- The County will withhold up to 15% of the CDBG or HOME award amount included in the written subrecipient agreement until all federal compliance requirements are met.
- All construction contracts between a grant recipient and contractor shall have 10% of payment retained until fulfillment of federal compliance is documented.

Excluded Parties

Grant recipients must not enter into any contract with any organization which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension”. All contractors must be registered in the System for Awards Management, go to <http://sam.gov/>. This applies to any CDBG or HOME assisted contract at any tier in the process. **Firms or contractors must be checked on the federal database before a contract is signed.**

Section 3

Section 3 of the Housing and Urban Development Act of 1968 is HUD’s legislative directive for providing preference to low- and very low-income residents of the local community and the businesses that substantially employ these persons, for new employment, training, and contracting opportunities resulting from HUD-funded projects. **As a condition of receiving more than \$200,000 of HUD Community Development Block Grant (CDBG) and/or HOME Investment Partnership (HOME) funds, grant recipients must comply with the requirements of Section 3 if the funding will be invested into a project involving housing construction, demolition, rehabilitation, or other public construction – i.e., roads, sewers, community centers, etc.** The requirements apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted with CDBG or HOME.

For details on the requirements of Section 3, see Guidebook Appendix 2 Section 3 Requirements.

Federal Labor Standards – Davis Bacon

If the project meets the threshold for Davis Bacon, the project will be required to meet Federal Labor Standards Provisions including payment of federal prevailing wage. The requirements are detailed in Guidebook Section I Labor Standards, Construction & Lead Safe Housing.