

# Procurement for Goods & Services

CDBG/HOME Guidebook



Section E



## Overview

The purpose of the 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 requirements are contained in **24 CFR Part 85 for governmental entities** and **24 CFR Part 84 for Non-Profits, Institutions of Higher Education & Hospitals**.

## General Procurement Provisions

Any grant recipient using CDBG or HOME funds to purchase goods or services must have written procurement procedures in place. 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 with 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 four methods of procurement that are identified in federal regulations:

- Small purchase procedures;
- Sealed bids;
- Competitive proposals; and
- Non-competitive proposals

### Small Purchase Procedures

- ❑ The small purchase procedures allow recipients to acquire goods and services totaling **no more than \$100,000**, without publishing a formal request for proposals or invitation for bids.
  - This method of procurement is typically used to purchase commodities such as equipment or other materials. The process is relatively simple, informal and does not necessarily involve competitive sealed bidding.
  - 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.
  - 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.

## Sealed Bids (Formal Advertising)

- ❑ Sealed bids (Formal Advertising) should be used for all construction contracts or for goods costing more than \$100,000.
  
- ❑ 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.
  
- ❑ In order for formal advertising to be feasible, the following minimum conditions must be present:
  - A complete, adequate and realistic specification or purchase description is available.
  - Two or more responsible suppliers are willing and able to compete effectively for the work.
  - 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.
  
- ❑ When the competitive sealed bid (formal advertising) process is used, the following requirements apply:
  - Publication Period: The invitation for bids must be publicly advertised and bids solicited from an adequate number of suppliers. The publication should be published at least once in a newspaper of general circulation, providing sufficient time prior to bid opening. If the publication period is not of sufficient time to attract adequate competition, the bid may have to be re-advertised.
  - Invitation to Bid: In addition to the language normally included in any advertisement for sealed bid, the add should also contain the following references:
    - *This project is financed through the Community Development Block Grant or HOME Investment Partnership program with funds obtained from the U.S. Department of Housing and Urban Development.*
    - If the project is subject to Davis Bacon labor standards requirements include the following: *This project is subject to meet*

*Federal Labor Standards Provisions and Davis Bacon wage requirements as explained in HUD form 4010. All work performed on the project will be subject to the approved wage determination rates in bid documents.*

- Equal Opportunity/Affirmative Action: *Owner is an equal opportunity and affirmative action employer. Minority-owned and women-owned businesses are encouraged to submit bids.*
  - If the project is subject to Section 3 requirements include the following: *This project is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 U (section 3).*
- Bid Package: The Bid Package should at a minimum contain the following:
- Instructions to Bidders
  - Agreement (contract), including time limit, liquidated damages and applicable federal contract provisions (see Contract Provisions section);
  - Specifications and drawings (brand names can only be used if “or approved equal” is included in their reference).
    - Note: Specifications and drawings for new construction or rehabilitation must comply with handicapped accessibility requirements under the Americans with Disabilities Act, Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.
  - A bid guarantee from each bidder as applicable (see Bonding section).
- Clear Definition: The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for bidders to properly respond to the invitation.
- Public Opening: All bids must be opened publicly at the time and place stated in the invitation for bids. The public is allowed at that time to review bids.
- Selection and Contracting: A firm-fixed-price contract award must be made by written notice to the 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 must be considered in determining which bid is lowest.

- Rejection of all Bids: All bids may be rejected when sound documented reasons exist. Such documentation shall be made a part of the files.

## Competitive

- ❑ Competitive proposals are used to purchase professional services where the total cost will exceed \$100,000. Under this procurement method, the subrecipient should publish a written request for submissions and then review these submissions based on established selection criteria.
- ❑ Under this approach, there are two possible methods of soliciting proposals.
  1. A Request for Proposals (RFP) asks that offerers submit both qualifications and cost information.
  2. A Request for Qualifications (RFQ) can be used for purchasing architecture and engineering services. It only asks for information on the offerer's expertise/experience and not on cost, subject to a negotiation of fair and reasonable compensation. When acquiring services other than architecture or engineering, the full RFP process should be used.
- ❑ When Competitive Proposals are utilized, the following requirements apply.
  - 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.
  - 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.
  - Technical Evaluation: A mechanism for technical evaluation of the proposals received, determinations of responsible offerer and the selection for contract award should be established.
  - Award: Award may be made to the responsible offerer whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerers should be notified promptly. The contract can be either a fixed price or a cost reimbursement type.

## Non-competitive Proposals

- ❑ Non-competitive procurement should only be used when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:
  - Where the item is available only from a single source;
  - 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
  - Where after solicitation of a number of sources, competition is determined inadequate.

## Contract Provisions

- ❑ Agreements made for professional services or construction should contain provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms as well as provisions for termination. Construction contracts or subcontracts must also contain provisions for bonding (see Bonding below).
- ❑ Grant recipients who are subject to Section 3 requirements must include the Section 3 clause in contracts for construction, demolition, and rehabilitation work in excess of \$100,000 (See Appendix 2).
- ❑ All contracts awarded must also contain the applicable procurement provisions of OMB Circular A-110 (see Appendix 1). These provisions address:
  - Equal Employment Opportunity
  - Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)
  - Davis-Bacon Act (40 U.S.C. 276a to a-7)
  - Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)
  - Rights to Inventions Made Under a Contract or Agreement (37 CFR Part 401)
  - Clean Air Act (42 U.S.C. 7401) and the Federal Water Pollution Control Act (33 U.S.C. 1251).
  - Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
  - Debarment and Suspension (E.O.s 12549 and 12689).

## Bonding

The requirements for bonding in procurement are as follows:

- **For construction or facility improvement contracts or sub-contracts exceeding \$100,000**, the following *minimum Federal requirements* (24 CFR 85.36(h) or 84.48(c)) for bid guarantees, performance bonds, and payment bonds must be met. These include:
  - A **bid guarantee** from each bidder equivalent to **5% of the bid price**. The “bid guarantee” must be a firm commitment in the form of a bid bond, certified check, or other negotiable instrument as assurance that the bidder is prepared to execute a contract within the time specified for the bid amount.
  - A **performance bond** from the contractor or sub-contractor for **100% of the contract price** to secure the contractor’s or sub-contractor’s fulfillment of all obligations under the contract.
  - A **payment bond from the contractor or sub-contractor for 100% of the contract price** to assure payment of all persons supplying labor and material under the contract.
- **For non-profit grant recipients**, 24 CFR 84.48(c) states that for contracts or subcontracts awarded for construction or facility improvement **equal to or less than \$100,000**, the grant recipient must follow its own policies for bid guarantees, performance bonds, and payment bonds.

## Conflict of Interest

### Activities covered by CFR provisions:

- ❑ In the procurement of property and services by grant recipients the conflict-of-interest provisions at 24 CFR 85.36 (governmental entities) and 24 CFR 84.42 (Non-profits) 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:
  - 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;
  - Require that employees, officers and agents of the grant recipient not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements; and

- 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:

- ❑ In cases not covered by 24 CFR 85.36 and 24 CFR 84.42, 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:
  - May obtain a financial interest or benefit from a HOME activity; or
  - Have an interest in any contract, subcontract or agreement for themselves or for persons with business or family ties.
- ❑ This requirement applies to covered persons during their tenure and for one year after leaving the organization.
- ❑ 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 or elected or appointed officials, may occupy a HOME-assisted unit in a development. This provision **does not** apply to:
  - An individual receiving HOME funds to acquire or rehabilitate his/her principal residence, or
  - An individual living in a HOME-assisted rental housing development where he/she is a project manager or a maintenance worker in that development.

### Contract Retainage

- ❑ The County/City 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”. This applies to any CDBG or HOME assisted contract at any tier in the process. To learn more about excluded parties, go to: <http://www.epls.gov/>

## References

- “Playing by the Rules, A Handbook for CDBG Subrecipients on Administrative Systems”, Chapter 3.0 Procurement and Contracting, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/communitydevelopment/library/subrecipient](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/library/subrecipient)
- “HOME Certified Specialist Administration, training manual”, Chapter 3: Choosing Qualified Partners, U.S. Department of Housing and Urban Development, August 2008.
- 24 CFR Part 85 - ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS, [www.hud.gov/offices/lead/library/lead/24\\_CFRPART\\_85.pdf](http://www.hud.gov/offices/lead/library/lead/24_CFRPART_85.pdf)
- 24 CFR Part 84 - UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS, [www.portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_36446.doc](http://www.portal.hud.gov/hudportal/documents/huddoc?id=DOC_36446.doc)