



Chapter 5: Procurement

Overview

This chapter describes the policies and procedures that must be followed when entering into contractual agreements with other entities. Services often procured by Grantees to complete CDBG projects include professional grant administrators, engineers, architects, and construction contractors.

Section 5.1 CDBG Procurement Requirements

HCD uses the procurement requirements found in 2 CFR 200.317 for its own procurement under the CDBG and other federal programs. The below requirements found in 2 CFR 200.318-26 apply to the procurement conducted by local jurisdictions participating in the state CDBG and other federal programs.

All procurements funded in whole or in part with CDBG funds must comply with the applicable federal requirements found in 2 CFR Part 200. The goal in using these procurement procedures is to achieve maximum open and free competition.

[2 CFR Part 200.318](#)

Each Grantee (and subrecipient) shall adopt and abide by the CDBG Procurement requirements set forth in this chapter, which shall apply only to procurements funded with CDBG dollars, as authorized in 2 CFR 200.318. The CDBG Procurement requirements include:

- A code of conduct to govern the performance of the Grantee's officers, employees or agents in contracting with CDBG funds and to ensure adherence to the conflict of interest and disclosure requirements (outlined in [Chapter 4: Grantee Requirements](#)); and
- A requirement that positive efforts be made to use small, minority, female, and Section 3 businesses; and
- A requirement that contracts be awarded, to the greatest extent feasible, to businesses that provide economic opportunities for low and very low-income persons residing in the project area; and



- A requirement that cost estimate has been determined in advance of contract bidding, per 2 CFR 200.323(a). See Section 8.6 Cost Reasonableness below for more information on this process.

[2 CFR 200.323\(a\)](#)

Section 5.2 Overall Procurement Requirements

Environmental Review and Bidding

As stated in [Chapter 3: Environmental Review](#), it is HUD policy as of April 2011 that the environmental review process be completed prior to bidding to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review.

Excluded Parties

Grantees must not award any contract to any organization that is debarred or suspended or is otherwise excluded from or ineligible for participation in federally assisted programs. This applies to any CDBG-assisted contract at any tier in the process. Documentation proving verification of contractor eligibility will be checked at monitoring.

- Prior to contract execution, the Grantee must check the organizations name against the federal System for Award Management (SAM).
- The Grantee must document that the organization (including all contractors and subcontractors) are not on this list with screenshots or other proof the organization is not debarred.

[System for Award Management \(SAM\)](#)

Minority Business Enterprises/Women Business Enterprises (MBE/WBE)

Background

The regulations at 2 CFR Part 200.318 requires Grantees to take affirmative action to contract with small and minority-owned firms and women business enterprises. HCD does not require set asides or participation quotas, but Grantees are expected to make special efforts to award contracts to MBE and WBE firms.

[2 CFR 200.321](#)



Requirements

The Grantee must make good faith efforts to see that Minority Businesses and Women Business Enterprises are provided opportunities as a result of Small Cities funding. Grantees are expected to solicit MBE/WBE businesses utilizing CDBG funds when possible. Grantees may be subject to more stringent requirements when soliciting disadvantaged businesses based on state or local law and funding sources.

Suggested Outreach

It is the Grantee's job to ensure the MBE/WBE firms are notified of any contracts ready for bid. Other specific measures a Grantee may take to meet M/WBE goals include:

- Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources.
- Including MBE and WBE firms on solicitation lists and sending them an Invitation to Bid.
- When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBEs.
- Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBEs.
- If any subcontracts are to be let, requiring the prime contractor to take the above affirmative steps.
- Setting aside a percentage of CDBG funds to be awarded to MBE/WBEs.
- Including MBE/WBE criteria with additional points in selection criteria for professional services procurement.

Section 5.3 Economic Opportunities

Background

Section 3 of the Housing and Urban Development Act of 1968, as amended, ("Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs be directed to low and very low-income persons. The priority of assistance should be to those who



are recipients of government assistance for housing, and business concerns which provide economic opportunities to low and very low-income persons.

The Section 3 program was created to ensure that persons living in communities where HUD-assisted programs were being funded could economically benefit from the resources being spent. This would improve the overall socioeconomic condition of not only the community, but also the low and very low-income residents that reside within the neighborhoods.

[24 CFR Part 75](#)

The implementing regulation for Section 3 can be found at 24 CFR Part 75.

Applicability

Whenever any portion of CDBG funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 may apply, based on the guidance provided below.

Section 3 requirements that apply to CDBG funded Projects:

Section 3 applies to all projects that receive \$200,000 or more in CDBG, or other HUD assistance, including projects that are financed in conjunction with state, local or private matching or leveraged funds, provided that the Section 3 monetary threshold requirements are met. In particular:

- Section 3 applies to recipients of CDBG funding, as well as its subrecipients, contractors and sub-contractors; and
- Professional service contract labor hours (construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and construction draw inspection and prevailing wage labor compliance) are not required to be reported.
- If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

The regulations should not be construed to mean that recipients are required to hire Section 3 Workers or award contracts to Section 3 Business Concerns other than what is needed to complete covered projects and activities. If the expenditure of funding for an otherwise covered



project and activity does not result in new employment, contracting, or training opportunities, reporting is still required.

Section 3 Benchmarks

HUD will establish Section 3 benchmarks for Section 3 workers and Targeted Section 3 workers through a document published in the Federal Register. HUD will update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every 3 years.

[24 CFR Part 75.13](#)

HCD's Grantees, developers and contractors will be required, to the greatest extent feasible, meet the current benchmarks published by HUD at the time of contract with HCD.

[HUD Section 3 Benchmark Notice](#)

Please ensure you are using the current benchmark when setting up a project.

More information on Section 3 can be found on the [HUD Section 3 Publications and Regulations](#) website.

Definitions

Section 3 Worker

- HUD defines a Section 3 worker as a worker that meets one of the following requirements: The worker's income is below the income limit established by HUD.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant

[Appendix 5-1: Section 3 Worker Certification Form](#)

Targeted Section 3 Worker

A Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern; or a Section 3 worker who is:

- Living within the service area or neighborhood of the project; or
- A YouthBuild participant.



Section 3 Business

To be considered a Section 3 Business Concern a business must meet one of the following criteria:

[Appendix 5-2: Section 3 Business Certification Form](#)

- At least 51% or more owned by Section 3 Workers, or
- Over Seventy-five percent (75%) of the labor hours performed by the business are performed by low- or very low-income persons, or
- It is a business at least 51 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

Responsibilities

A local government that receives CDBG funding has the responsibility to comply with Section 3 requirements. The Grantee is also required to “ensure compliance” of their contractors and sub-contractors.

This responsibility includes:

- a. Notifying Section 3 Workers and business concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids/proposals for available contracts and job openings with the Grantee;
- b. Notify potential contractors of their responsibilities under Section 3;
- c. Include Section 3 language in all applicable contracts;
- d. Require subrecipients, contractors, and subcontractors to meet the requirements of §75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.
- e. Document action(s) taken to meet the HUD benchmarks;
- f. Respond to Section 3 complaints; and
- g. Submit required Section 3 reporting as a component of the final close-out report in eCivis.



Outreach Best Practices

Grantees must develop outreach to Section 3 Workers and Businesses within the non-entitlement County. Best practices include:

- Publication of opportunities in newsletters or other local newspapers, including those targeted to Limited English Proficient populations.
- Use of signage at the project site and flyers posted in the project area.
- Notification of potential training or employment opportunities to neighborhood and nonprofit groups, including Public Housing Authorities, servicing low- and very low-income persons.
- Communicate opportunities to employment agencies and career centers.

CAUTION: Compliance with Section 3 does not supersede other applicable laws and regulations. The 1992 amendments specifically state that Section 3 requirements will be consistent with federal, state, and local laws and regulations. Therefore, the federal procurement standards cannot be violated to comply with Section 3.

Section 5.4 Conflicts of Interest

Background

Nothing is more detrimental to a successful procurement operation than to have the relationship between the Grantee and the contractor questioned regarding real or apparent conflicts of interest. Conflict of interest issues deal with the relationship between the parties and financial gain. Those that could be judged to have conflicts include local officials, employees, consultants, family members, and business partners. Also, see [Chapter 4: Grantee Requirements](#) for information on conflict of interest.

Section 5.5 Methods of Procurement

Grantees must select from one of five methods of procurement based on the type of products and/or services being procured and their cost. Grantees must ensure that they are following the stricter of the federal, state or local requirement. Many Grantees will be required to utilize a lower threshold for

[2 CFR 200.318](#)
[California Uniform Public
Construction Cost
Accounting Act \(CUPCAA\)](#)



procurement types than the federal requirements at 2 CFR 200.318.

Micro Purchase Procedures

Procurement by micro-purchase is the acquisition of goods or supplies, the aggregate dollar amount of which does not exceed the current micro-purchase threshold of \$10,000. To the extent practicable, the municipality must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the municipality considers the price to be reasonable. Micro-purchases require need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE firms when possible.

Small Purchase Procedures

Small purchase procedures entail a relatively simple and informal process that can be used when cost of goods or supplies, in the aggregate, are no more than \$250,000. Under this process, the Grantee must:

- Obtain price or rate quotations either by phone or in writing from an adequate number of qualified sources (at least two sources).
- Maintain documentation regarding the businesses contacted and the prices quoted.
- Make the award to the lowest responsive and responsible source.
- If applicable, prepare and sign a contract formalizing the scope of work and the terms of compensation.
- Maintain need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE firms when possible.

Competitive Sealed Bid

The Competitive Sealed Bid method is the required method for procuring CDBG-funded construction work. (See [Chapter 7: Labor Standards](#) for detailed information on preparing construction bid documents.) The following requirements apply to the competitive sealed bid procurement process:

- Competitive sealed bids are initiated by publishing an Invitation for Bid (IFB).
- The IFB must be advertised in the newspaper of daily general circulation at least one time



not less than fourteen days before the date set for the opening of bids.

- The IFB must also be distributed to all trade publications (construction services).
- The IFB must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers and trade publications beyond the immediate locality of the work to be completed.
- The IFB must also be distributed to MBE/WBE businesses listed on the [The Supplier Clearinghouse](#) providing related services.
- The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- 2 CFR Part 200 requires a bid guarantee from each bidder equal to five percent of the bid price. This guarantee serves as an assurance that the chosen contractor will execute the contract within the time specified.
 - Bid guarantees can be in the form of a Bond or Cashier's check that are returned to the unsuccessful bidders.
- All bids must be publicly opened at the time and place stated in the Invitation for Bids.
- The bids must be tabulated and reviewed.
- The contract is awarded to the lowest, responsible and responsive bidder.
- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.
 - The contract must be a firm-fixed-price contract (lump sum or unit price with a maximum amount identified).
- If alternates (additives or deducts) will be taken, the bid documents must be clear as to the priority order in which those alternates will be applied.

Competitive Negotiation

This method of procurement is used if the selection can be based on factors other than cost, such as experience and capacity. Procurement of architectural, engineering, planning and



administrative services fall under this category. Grantees shall seek permission from HCD prior to using competitive negotiation for contracts other than architectural, engineering, planning or administrative services. Only fixed-price contracts or hourly contracts with a not-to-exceed figure may be awarded.

Caution: Cost plus a percentage of cost contracts are not acceptable. This means that standard architectural and engineering contracts cannot be used without changing the fee structure that is based on a percentage of costs.

NOTE: Consultants must not assist the Grantee with procurement if they intend to respond to the solicitation for services.

Competitive negotiations are initiated by publishing a Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selections (RFQ may ONLY be used for architectural or engineering services). In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the Grantee should provide or make available any materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions. A sample RFQ is provided as Appendix 5-8 to this Chapter.

The following requirements apply to the competitive negotiation procurement process:

- The RFP or RFQ must be advertised in a newspaper of daily general circulation in the area at least one time not less than fourteen days before the date set for the opening of proposals.
- The RFP must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers and trade publications beyond the immediate locality of the work to be completed.
- If an RFP is used, it should specify the scope of services to be provided and the type of contract to be used: fixed price, or an hourly rate with a not to exceed figure.
- An RFP should also:
 - Specify that cost and pricing data is required to support the proposed cost;
 - State anticipated start and completion dates; and
 - List evaluation criteria that will be used in ranking proposals.



- All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing. Appendix 5-11 provides a sample Professional Services Evaluation.
- For both RFPs and RFQs, selection is made on the basis of the most responsible offer or price with consideration given to the factors identified in the Request for Proposal or Qualifications.
- For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.
- The Grantee must maintain documentation for all services and reasons for selection.
- The Grantee must send an award letter to the selected contractor and document the file with it.
- The Grantee must prepare and sign a contract formalizing a scope of work and the terms of compensation.
- The Grantee should promptly notify unsuccessful bidders in writing and document the file with the rejection letters.

Non-Competitive Negotiations

Non-competitive negotiation is procurement through solicitation of a proposal from one source and is often referred to as sole source procurement. A contract may be awarded by noncompetitive negotiation **only** when the award is infeasible under small purchase procedures, competitive sealed bids, or competitive negotiations and one of the following circumstances applies:

- There is some public emergency that will not permit delay resulting from competitive solicitation (the Grantee must declare an emergency as authorized by law); or
- The results of the competitive negotiations are inadequate; or
- The product or service is available only from a single source.

Caution: The use of the non-competitive negotiation procurement method must be authorized in advance by HCD. Additionally, Grantees must have justification that meets federal standards for using the non-competitive negotiation process.



The following requirements apply to the non-competitive negotiation procurement process:

- Negotiations must be conducted with the selected company regarding a scope of work and price; and
- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

Section 5.6 Other Procurement Issues

Cost Reasonableness Estimates

2 CFR 200.323 requires Grantees to perform a cost or price analysis in connection with every procurement action in excess of the Small Purchase Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Grantee must make independent estimates before receiving bids or proposals. Documentation of a cost estimates and cost/price reasonableness will be checked at monitoring.

[2 CFR 200.323\(a\)](#)

[Appendix 5-3:
Independent Cost
Estimates](#)

NOTE: Contractors/consultants that provide a price estimate to assist the Grantee with a Cost Reasonable Estimate are NOT allowed to bid on the RFP/RFQ.

Over Budget Bids

Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. This section governs the process for dealing with such a situation.

Options

The following options are available for awarding a bid following an overage:

1. Obtaining additional funds from another source and continuing with the original IFB.
2. Rejecting all bids, revising project scope and bid specifications, and issuing a revised IFB (competitive sealed bid) open to the entire public.



Low Bids and Change Orders

To maintain the integrity of the bidding process, the change order process must only be used when (1) the change order work fits within the scope of the original project and (2) the reason for the change is something that was unanticipated or unforeseen at the time the original contract was awarded.

Change orders cannot be used for fundamental redesign of a project and cannot be used to “fix” problems in the project specifications if the municipality was aware of the problems before awarding the contract. (If your specifications have problems, it’s better to issue an addendum—if the problems were discovered before bids are due—or to re-bid the contract.) Change orders also cannot be used to take advantage of a good deal on a construction project—in other words, if you’ve awarded a contract for 500 linear feet of street paving work, you can’t then use a change order to double the number of linear feet included in the contract just because the successful bidder gave you a really great price on the original contract.

Documentation in the Grantee’s file with every change order must include:

- Documentation of Change Order Approval process as outlined in the Grantee’s Procurement Policies and Procedures
- Supporting justification which describes why the change is necessary;
- Itemized cost/unit price/quantities;
- A cost and price analysis (usually conducted by an engineer) that determines the costs are reasonable;
- Any revised plans and specifications; and
- Certification that no acquisition is necessary to complete the change order work.

The architect/engineer or project inspector usually prepares change orders; however, the Grantee must approve and authorize change orders before they are executed. The proposed change should also be verified and/or recommended for approval by the project engineer, project manager, architect or other technical support personnel. The Grantee should compare such change orders to the CDBG construction budget prior to approval.

If a change order will result in a significant change in the scope of work, a new CDBG activity, or a change in location, beneficiaries, or how the project will be carried out, a contract amendment through the eCivis Grants Network will be required. Please see the eCivis External User Manual



for assistance completing this step in the Grants Network.

If the change involves a new activity not previously included in the original bid and will result in a significant cost change, then the new scope may have to be re-bid. Please contact your CDBG Program Representative for a determination. Factors to be considered include whether the change order will exceed the project budget, if the service area will change and affect national objective compliance, if the original intent of the project will be altered, the NEPA scope of work is changed, etc.

[CDBG Representatives by County Groups with Map](#)

Add/Deduct Alternates

Grantees are encouraged to use add and deductible alternates for inclusion unless doing so is not practical or not feasible. When deductible alternates are requested, the bid document issued by the Grantee must specify the method and order in which alternates will be applied in determining the low bid. Drawings must also clearly show the alternates.

For example, a project might involve the construction of a new community center that includes a portico and a small out-building to accommodate future expansion. The bidding instructions would indicate which items are to be bid as deductible alternates and the order of priority in which they are to be deducted. In this example, assume the portico and out-building are to be bid as deductible alternates, and the order of priority for deducting is first, the out-building, and second, the portico. The Grantee would go back through each bid (not just the lowest one) and first subtract the amount each bidder estimated for the out-building from the total amount she/he bid for the project. The Grantee would then check to see if any of the adjusted bids are within budget. If so, the Grantee can award the bid to the bidder with the lowest adjusted bid. If not, the Grantee would repeat the process, this time deducting the cost of the portico from the adjusted bid of each bidder. Depending on the number of deductible alternates specified, the process can be repeated until one of the adjusted bids is within budget.

It is imperative that the Grantee's IFB explicitly state the method of award, including use of any deductible alternates. Failure to be clear and precise on the procedures that will be utilized can cause confusion or disputes among bidders that could, at the very least, cause project delays.

Grant Administration Services

By Contractors/Consultants

Professional grant administrators are often procured by Grantees to undertake CDBG projects. Note that any person contracted to perform grant administration services to be paid with grant



funds, must be procured following CDBG procurement requirements.

By Grantee Staff

A Grantee may instead choose to perform some or all of these services with their own staff members and can be reimbursed for the time an employee spends working on the CDBG project. It is important to note that time sheets must demonstrate the time spent solely on the CDBG project. This method requires source documentation of all costs at time of monitoring.

Section 5.7 Procurement of Professional Services

This section describes steps that are required to help ensure Grantees comply with federal and state procurement requirements in the procurement of professional services.

Step 1: Prepare the RFP/RFQ The Grantee must prepare an (RFP). An example of an RFP and RFQ are provided as Appendix 5-4 and Appendix 5-5.

[Appendix 5-4:
Sample Request for
Proposals](#)

Step 2: Solicit Responses In order to meet the goals of MBE/WBE participation; the Grantee must use the Supplier Clearinghouse to identify and solicit responses from MBE/WBE businesses providing related professional services.

[Appendix 5-5:
Sample Request for
Qualifications](#)

Step 3: Publish RFP/RFQ The Grantee must advertise the RFP/RFQ publicly by publishing in local newspaper of daily general circulation.

[Appendix 5-6:
Sample RFP Publication](#)

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- Past record of performance on contracts with the locality and other clients, including quality of work, timeliness, cost control, and citizen's complaint resolution in a timely manner.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.

[Appendix 5-7:
Sample RFQ Publication](#)



- An evaluation consideration to small, local, minority or female owned firms. These firms may be awarded extra points in order to promote the employment of these firms.

The relative importance of each of these factors should be determined beforehand by assigning values to each (e.g., experience may be assigned 30 points out of a possible 100 points).

Step 4: Establish Evaluation Committee Appoint an evaluation team of knowledgeable members (town council, board of public works members, etc.) and develop an evaluation plan to rank respondents and provide guidance during the selection process. Typically, three to five people make up the Evaluation Committee. At least one of the committee members should be the Chief Elected Official (CEO) or designee. An example of a scoring criteria evaluation document is Appendix 5-6: Professional Services Evaluation.

Step 5: Open Responses Proposals must be received at the address stated in the legal advertisement, logged in and marked with the date and time received prior to being opened and submitted to the Evaluation Committee for review. Any proposal not received by the date and time stated in the legal advertisement must be returned, unopened to the submitter.

Step 6: Make Vendor Selection If interviews are conducted, each member of the Evaluation Committee must complete an Interview Evaluation and Score Sheet for each vendor short listed. Each scorer must use the same scoring and weighting criteria making their best effort to score each proposal fairly and without bias. These documents will be required at monitoring. Following the Evaluation Committee's review, the vendor whose proposal is determined to be the most advantageous to the project, based upon qualifications, price and other factors may be selected.

Caution: Be aware of potential conflicts of interest. Some firms have the capacity to administer projects and design buildings or public facilities systems. It is considered a conflict of interest for the firm in charge of administration to also be in the position to oversee the engineering for a project. There can also be conflicts in the areas of rehab inspection, lead based paint testing, surveying, etc.

Step 7: Notify Successful and Unsuccessful Proposer(s) The Grantee must notify all successful and unsuccessful vendors, in writing.

Step 8: Prepare a Contract: Once a firm is chosen and the basis of selection is documented along with the reasonability of cost, it is time to start the preparation of a contract with the successful individual or firm. See Section 5.10: Contract Requirements below for information.

Step 9: Execution of Contract(s) The Grantee may execute contracts

[Appendix 5-8
Sample Professional
Services Evaluation](#)



with the successful vendor after they have received Release of Funds from HCD.

Section 5.8 Pre-Bidding Requirements

The first step in effective management of CDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification – usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. The contract must be consistent with applicable building codes. Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer registered in the State of California. While the engineer/architect prepares the technical specifications, the Grant Administrator must determine the applicability of Labor Standards and request the necessary wage decisions.

NOTE: The environmental review must be completed prior to publishing the bid advertisement. Please refer to Chapter 5: Environmental Review for more information.

Property Acquisition Issues

At this stage of the process, the Grantee must have obtained all lands, rights-of-way, and easements necessary for carrying out the project. All property to be acquired for any activity, funded in whole or in part with CDBG funds, is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policies for Federal and Federally Assisted Programs (42 U.S. Code Chapter 61), also referred to as the Uniform Act or URA. Included in the definition of property, among other things, are rights-of-way and easements. If the construction project involves real property acquisition, the Grantee should contact its CDBG Program Representative very early and make sure the acquisition is done according to the provisions of the Uniform Act. See [Chapter 8: Acquisition](#) for additional information.

Section 5.9 Procurement of Construction Services

This section describes certain key steps that are required to help ensure Grantees comply with federal and state procurement requirements when procuring construction services:

Step 1: Obtain the Appropriate Wage Decision



Federal regulations require that the Davis-Bacon Wage Determination in effect on the day of bid opening is the wage decision that must be used for all construction on federally funded projects. When a modification is published less than 10 days before the opening of bids, and the Grantee finds that there is not a reasonable time available before bid opening to notify bidders of the modification, a report of the finding is inserted in the contract file and the wage determination in effect 10 days prior to bid opening may be used. In order to comply with federal requirements, HCD has assigned the responsibility of obtaining the appropriate wage decision(s) for a project to the Grantee or its designee. An initial wage decision should be obtained prior to issuing the IFB and provided to the Architect or Engineer to be included in the project bid specifications. The Grantee will need to access the DOL website in order to obtain the Davis-Bacon Wage Determination for the project. The printed copy of the effective wage decision will be required at monitoring.

[29 CFR 1.6\(c\)\(3\)](#)
[SAM.gov Wage Determinations](#)

Step 2: Prepare Invitation for Bid (IFB)

The Grantee must develop an IFB that clearly identifies the services required including: all technical specifications required, any other requirements that apply to the contract, and instructions for preparing and submitting a bid. Bid specifications may not identify a specific name brand or provider except if required to identify a piece of equipment necessary for completion of the project. In this instance, the name brand or provider must be followed with the terminology, 'or approved equals.' It is the responsibility of the Grantee to provide the bid specifications preparer with the required contract provisions, as specified in the Assistance Agreement, and the Davis Bacon or State Prevailing Wage Decision applicable to the project. The bid specifications must include a statement that the Wage Decision is subject to change and the one that is in effect on the date of the bid opening will be applicable to the total project if the contract is awarded within 90 days of bid opening. If not, the applicable Wage Decision becomes the one that is in effect on the date that contracts are signed.

Step 3: Publish Invitation for Bid (IFB)

The IFB must be advertised in the newspaper of general circulation in the jurisdiction at least one time not less than 14 days before the date set for the opening of bids. This 14-day minimum bidding period is accepted by HCD but it is advised that communities give bidders more time. The IFB must state the date, time and location for submission of bids. The legal advertisement must provide information pertaining to where the project plans and specifications may be obtained or reviewed. In order to obtain the highest level of free and open competition, publishing the IFB in well-known trade journals and/or sending a copy of the IFB to the area's local contractors may

[Appendix 5-9:
Sample IFB Publication](#)



increase the number of responses received. An example of an IFB advertisement is provided as Appendix 5-9: Sample IFB Publication.

Step 4: Solicit MBE/WBE Responses

- The CDBG program requires Grantees to include MBE/WBE contractors to the best of their ability. To that end, a copy of the IFB advertisement must be distributed to MBE/WBE businesses listed on the Supplier Clearinghouse.

[The Supplier Clearinghouse](#)

Step 5: Confirm Wage Rates

Ten (10) days before bid opening, the Grantee must check DOL Online to determine if there have been any modifications or revisions to the Davis-Bacon wage rate decision. If it is determined during the "ten day call" that there has been a modification, the Grantee will then send it as an addendum to all contractors who received the original bid package.

Step 6: Issuing Addenda

If the bid document is amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. However, addenda may be issued only up to 72 hours of bid opening. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files.

Step 7: Conduct Pre-Bid Meeting

HCD recommends Grantees conduct a pre-bid meeting on all sealed bid procurements. The pre-bid meeting gives the Grantee an opportunity to explain all state and federal requirements of a CDBG funded project to prospective bidders. A sample Pre-Bid Guide is attached as Appendix 5-10: Sample Pre-Bid Guide.

[Appendix 5-10:
Sample Pre-Bid Guide](#)

Step 8: Receive Bids

As bid packets arrive, the time and date the bid was received from the vendor is written on the outside of the bid packet. Any bid received after the date and time due must be rejected and returned to submitter unopened.



Step 9: Open Bids

Bids must be opened and read aloud at a public meeting, at the date, time and location stated in the legal advertisement. The bidder's name and amount of bid must be read and recorded in the minutes of the bid opening meeting. No action should be taken at the bid opening meeting except by order of the AO to take the bids under advisement. Bid opening meeting minutes and a sign in sheet of all attendees must be maintained for the project records and will be required prior to drawing down any CDBG funds for construction.

Step 10: Make Vendor Selection

The Competitive Sealed Bid method of procurement requires that the construction contract be awarded to the lowest bidder, provided that the lowest bidder is found to be a responsive and responsible bidder. If the bids received are within the project budget, the Architect or Engineer will review all bid packages to determine if each one is responsive and responsible and verify that the bonding and certification requirements outlined in the bid specifications have been included. Upon completion of these reviews, the Architect or Engineer will prepare a bid tabulation sheet, and a written statement to the Grantee or Subrecipient making a recommendation of the lowest responsive and responsible bidder. The bid tabulation must be certified (stamped) by the project Architect or Engineer. If the low bidder is found to be unresponsive or irresponsible and is not recommended by the project Architect or Engineer, the Grantee's legal counsel must be consulted prior to making the determination to reject the lowest bid and consider the second lowest bidder. A written legal opinion must accompany all procurement documents where the low bidder was not selected in case of a formal bid protest or possible litigation.

Step 11: Award the Contract

After review of the bids, the Grantee or subrecipient must award the contract to the lowest responsible and responsive bidder if his/her bid is within the budgeted amount, preferably within 30 days of the opening.

CAUTION: Contracts are to be awarded within a 90-day period. If [29 CFR 1.6\(c\)\(3\)\(iv\)](#) contracts are not awarded within 90 days of bid opening, any wage rate modifications that occurred within that 90-day period will apply to the contract.

If the contract is awarded to a bidder other than the low bidder, the Grantee must prepare a written statement for the project file explaining why each lower bidder was deemed non-responsible or non-responsive.



- To be responsive, the bidder must have submitted all required documentation. However, the responsiveness criteria must be uniformly applied to all bidders. If one bidder is rejected for failing to submit a particular document, for example, all bidders failing to submit that documentation must be rejected.
 - The Grantee must check the contractor and all subcontractors' names against the Federal Excluded Parties List System (available at <https://sam.gov/content/exclusions>). The Grantee will document that the contractors and subcontractors are not on this list.
 - The Grantee must check the contractor and all subcontractors' names against the HUD Limited Denial of Participation List (available at https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp). The Grantee will document that the contractor and subcontractors are not on this list.
 - The Grantee must check the contractor and all subcontractors' names against the California Debarred Parties List (available at <https://www.dir.ca.gov/dlse/debar.html>). The Grantee will document that the contractor and subcontractors are not on this list.
 - Documentation must be submitted in the Grants Network prior to submission of construction claims.
- The bidder may also be determined non-responsive if, in the Grantee's judgment and the judgment of the consulting professional, the bid is so unreasonably low that the project cannot be constructed for the amount bid. This is often a problem with inexperienced contractors. The Grantee should always contact its attorney and its HCD Program Manager if the Grantee must award to other than the low bidder.

Step 12: Execute the Contract

Once the bidder is accepted and the reasonability of cost is established, the Grantee may execute the contract (provided they have received authority to use grant funds from HCD) and schedule the mandatory Preconstruction Conference.

Following award of the contract, the contract documents and applicable bonding and insurance must be completed and executed. Contract documents include all the items contained in the bid package as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms. See [Chapter 4: Grantee Requirements](#).



Section 5.10 Contract Development

All work and services to be accomplished for the completion of a Community Development Block Grant (CDBG) funded project must be covered by a legally enforceable, fully executed contract, regardless of the source of funds to be used for payment of the contract amount.

Before any contract may be fully executed, it is the Grantee's responsibility to ensure that the contract complies with applicable federal and state laws, provides complete and full provision of the project scope, and avoids any real or implied Conflict of Interest concerns.

Contracts paid with State and Small Cities CDBG funds must utilize a Firm, Fixed-Price Contract. A Firm, Fixed-Price Contract requires that the contractor deliver the product or service for the agreed-upon price. This type of contract is required for:

- Professional services, including Grant Administration, Labor Standards, and Environmental Review,
- Engineering or Architectural services,
- Legal fees, rate consultant, or any other type of professional services required, and
- Construction of the project activities.

Costs Plus Percentage of Cost contracts are specifically prohibited by CDBG regulations for any type of work or services to be performed on CDBG funded projects.

[2 CFR 200.323\(d\)](#)

Section 5.11 Contract Requirements

All contracts executed for performance of CDBG related activities must include a full and complete description of the federal and state requirements for contract compliance. The following documents must be physically attached to each contract as applicable:

- Professional Service Contracts must include all required Federal Contract Provision as outlined in the Grantee's Standard Agreement.
- Housing and Urban Development (HUD) Form 4010. (see HUD 4010 in [Chapter 7: Labor Standards](#))



Bonding Requirements

Bonds are negotiable instruments required by federal and state law from construction contractors as a form of insurance. The bonds are available to contractors from surety companies, which are then turned over to the Grantee to protect against situations that may arise. Some of these situations include:

[2 CFR 200.304](#)

- Work not completed as specified and/or the contractor refuses to finish the work without a change order or price escalation;
- Laborers or subcontractors are not being paid for work and are suing the Grantee to recover their loss; or
- Payment of liquidated damages is required, arising from labor standards violations.

Construction contracts must include the following documents either physically or by reference to the project bid specifications and any addendums:

1. Applicable Davis-Bacon and Related Acts (Davis-Bacon) Wage Decision assigned to the project.
2. Bid Bond (submitted with the bid), Payment Bond and Performance Bond obtained by contractor and provided to Grantee to insure contract fulfillment.
 - The Bid Bond guarantees that the selected bidder will execute the required contract documents within the specified period of time. The Bid Bond must be equal to 5% of the bid price (contracts over \$50,000).
 - The Labor & Material Payment Bond is binding upon the contractor, subcontractors and their successors or assigns, for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must be for 100% of the contract price (contracts over \$100,000).
 - The Performance Bond ensures that the contractor will fulfill all obligations under the contract within one year of substantial completion. The performance bond must be for 100% of the contract price (contracts over \$25,000).
 - If a construction manager is employed, each subcontract exceeding \$100,000 shall be bonded or a certified check required.



The bonding company issuing the bonds must hold a 'Certificate of Authority' as acceptable sureties.

Insurance Requirements

- Contractor's Certificate of Insurance shall be required. The Grantee is responsible for ensuring that the levels are adequate.

Contract Contents and Provisions

All contracts for work or services on CDBG funded projects must include the HCD Federal Contract Provisions as well as the following:

1. Effective date of contract, https://www.hcd.ca.gov/grants-funding/active-funding/cdbg/docs/final_reps_by_county_map.pdf
2. Detailed description of the work or services to be performed,
3. Specifications of materials or other services to be provided,
4. Time for performance and completion of contract services,
5. Method of Compensation,
6. Conditions and terms under which the contract may be terminated, and remedies for violation or breach of contract, and
7. Printed and signed names and titles of Signatories for all contract parties.

[CDBG Procurement – Federal Requirements and Best Practices](#)

Retainage Requirements

A retainage account may be set up to ensure the project is satisfactorily completed, all suppliers have been paid in full, and all contractors, subcontractors and suppliers have submitted lien waivers. The amount of retainage withheld may not exceed 5% of the total contract amount.

[California Public Contract Code §7201](#)

A Retainage Agreement must be reached, and included in the contract, between the Grantee and the prime contractor to establish a procedure for holding the retained funds until all parties agree that the retainage may be released to the contractor upon satisfactory completion of the project.

Retainage Account funds may be:



1. Deposited into a mutually agreed upon financial institution, in a separate account. If deposited to an interest-bearing account, any accrued interest belongs to the contractor
2. Deducted from amounts of drawdowns for payments due contractor so that the State is holding the retainage funds until they become due and payable to the contractor.

[California Civil Code §8810-8822](#)

If the contractor has provided Contractor's Affidavit of Release of Liens (AIA Form G706A) and lien waivers from major subcontractors and suppliers, a contractor may request the balance of retainage.

Best Practices

- Be sure to follow your established policies
- Make sure to select the most appropriate procurement method. If the potential procurement cost is at the threshold, be conservative!
- Document each procurement, especially if it deviates from standard practices or uses a waiver or exception
- Plan for procurements as far ahead as you can, ideally at project concept. Try to incorporate all potential activity phases, full scopes of potential work, and long-term expectations
- If you want to use the same contractor/consultant throughout the project or on multiple phases, then you must procure for the full scope of work
- Use budget options or additives to get costing for the full scope of work
- Use conditions in the contract to restrict for phase the scope of work to available funds