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## Introduction

CDBG-DR subrecipients are responsible for carrying out all procurement activities in accordance with federal requirements under [2 CFR 200.318-327](#). These requirements are applicable to the purchase or procurement of any goods and/or services using CDBG-DR funds.

## 2 CFR 200 Overview

When expending CDBG-DR funds, [2 CFR 200.318\(a\)](#) requires subrecipients to “have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section,” for the acquisition of property or services required under a Federal award or subaward. **Therefore, subrecipients must comply with the “most restrictive” procurement requirements contemplated by Federal, State, and local law.**

Federal procurement standards in 2 CFR 200 include:

- All procurement transactions must be conducted in a manner providing full and open competition ([2 CFR 200.319](#)) (except for the circumstances provided in [2 CFR 200.320\(c\)](#) and mentioned below).
- Subrecipients must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts ([2 CFR 200.318](#)).
- Subrecipients must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
  - Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition; and
  - Identify all requirements which the offerors must fulfill, and all other factors to be used in evaluating bids or proposals ([2 CFR 200.319](#)).
- Noncompetitive (i.e. sole source) procurements can only be awarded in accordance with [2 CFR 200.320\(c\)](#) and with approval from DCA. Further discussed below, under Non-competitive Procurement.
- Subrecipients must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include those listed in [2 CFR 200.321\(b\)](#). Further discussed below, under Minority Business Enterprises/Women's Business Enterprises.
- All contracts, regardless of procurement type, must include all provisions outlined in Appendix II to Part 200. ([2 CFR 200.327](#)).

## Debarment and Suspension

Subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, [2 CFR Part 180](#). The regulations in [2 CFR Part 180](#) restrict awards, subawards, and contracts with certain parties that are debarred,

suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Subrecipients must require submission of a contractor's or service provider's [SAM.gov](https://www.sam.gov) debarment, or exclusions record to ensure any party receiving CDBG-DR funding is eligible to receive federal funding.

### CDBG-DR Procurement Policy

Each subrecipient shall adopt and abide by the [2 CFR Part 200](https://www.ecfr.gov/current/title-24/chapter-I/subchapter-B/part-200) Uniform Guidance.

Subrecipients must submit updated policies to DCA for review prior to expending funding. The overall requirements governing the purchase process are designed to ensure that subrecipients:

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

### Overall Procurement Requirements

#### Environmental Review and Bidding

Environmental Review process is based on NEPA which requires subrecipients to have a signed environmental clearance from DCA prior to bid advertisement.

#### Minority Business Enterprises/Women's Business Enterprises (MBE/WBE)

##### Background

[2 CFR 200.321](https://www.ecfr.gov/current/title-24/chapter-I/subchapter-B/part-200.321) requires subrecipients to take affirmative action to contract with small and minority-owned firms and women's business enterprises. Goals for minority participation in construction are below.

##### Requirements

Subrecipients are required to notify MBE/WBE firms of the opportunity to bid on CDBG-DR funded contracts. Each subrecipient must ensure appropriate outreach has been completed to ensure MBE/WBE firms have the opportunity to participate in the CDBG-DR program.

##### Outreach

Specific measures a subrecipient must take to meet MBE/WBE goals include:

- Maintaining solicitation lists of qualified small, minority-owned, and women's business enterprises.
- Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources.

- 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.
- Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U.S. Department of Commerce and the Community Services Administration as required.
- If any subcontracts are to be let, requiring the prime contractor to take the above affirmative steps.

### Section 3

#### Background

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD investments are directed, to the greatest extent feasible, to low- and very low-income persons and to business concerns which provide economic opportunities to low- and very low-income persons. The goal is to keep dollars local and help foster local economic development, neighborhood economic improvement, and individual self-sufficiency.

Subrecipients will make every effort to ensure contractors and subcontractors comply with Section 3 responsibilities, as detailed in [24 CFR Part 75 Subpart C](#), which became effective on November 20, 2020.

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 Uniform Code procurement standards cannot be violated to comply with Section 3.

**Note: In cases where a subrecipient receives CDBG-DR assistance of over \$200,000 for a program but no individual project or activity exceeds the \$200,000 threshold, the Section 3 requirements do not apply.**

#### Section 3 Key Points

- Section 3 applies to recipients/contractors of \$200,000 or more in CDBG-DR assistance. The types of projects that are covered by Section 3 are housing construction, demolition, rehabilitation, or other public construction (e.g., infrastructure or community facilities).
- Section 3 applies to the entire project even when the CDBG-DR funds are only a portion of the total funding.
- Compliance can be met in two ways:
  - Quantitative goals:
    - **25%** or more of all labor hours must be worked by Section 3 workers.
    - **5%** or more of all labor hours must be worked by Targeted Section 3 workers.
  - Qualitative Goals:
    - If a subrecipient has not met the quantitative goals, they can still be considered compliant if they can provide evidence of a number of

qualitative efforts to assist low and very low-income persons with employment and training opportunities.

- CDBG Section 3 Guide provides a list of qualitative efforts CDBG-DR subrecipients may undertake to document the project made qualitative efforts to assist low and very low-income persons with employment and training opportunities.

### Contractor Requirements

Contractors or subcontractors for construction, demolition, rehabilitation, or other public construction activities triggering Section 3 are required to comply with the Section 3 regulations. Refer to the Section 3 Guide available on [DCA's website](#) for additional information on Section 3.

**Contractors should be made aware of Section 3 goals and reporting requirements as part of the procurement/bidding process.** To do so, subrecipients must include the attached "Certification of Acknowledgment of Section 3 Requirements" to procurement solicitations for proposer/bidder signature.

### Section 3 Reporting Requirements

It is required to document efforts made to comply with Section 3. For the qualitative efforts, each project that triggers the Section 3 requirements will be required to report the total labor hours for the project, labor hours completed by Section 3 qualified workers, and labor hours for Targeted Section 3 workers. Documentation of the quantitative efforts should contain memoranda, correspondence, advertisements, etc., illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). Documentation will show the steps taken to implement the plan, and will most likely cross-reference information in other files, such as procurement and construction contracting. The mere existence of a Section 3 Action Plan is not sufficient. Affirmative attempts to reach Section 3 goals must be made.

Finally, subrecipients are required to report on both quantitative outcomes and qualitative efforts at the completion of the project.

### Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, currently set at \$250,000, DCA may accept the bonding policy and requirements of the subrecipient provided that DCA has made a determination that the Federal interest is adequately protected. ([2 CFR 200.326](#)) If such determination has not been made, the minimum requirements must be as follows:

- ✓ A bid guarantee from each bidder is equivalent to five (5) percent 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 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

- ✓ A payment bond on the part of the contractor for 100 percent 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 materials in the execution of the work provided for in the contract.

### Domestic Preference for Procurement

Domestic preference for procurement is detailed in [2 CFR 200.322](#) and states:

- a) As appropriate and to the extent consistent with law, the subrecipient should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- b) For purposes of this section:
  - 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - 2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### Conflicts of Interest

Subrecipients must adhere to the conflict of interest requirements in [2 CFR Part 200](#) to prevent conflicts of interest in procurement. This pertains to all employees, officers, agents of the grantee, members of their immediate family, and partners. Subrecipients shall prevent the provision of financial interest or other benefits earned for any of these persons due to a CDBG-DR-related procurement action. These persons also cannot solicit or accept gratuities, favors, or other items of monetary value from contractors. No person, business, or organization shall be allowed to give, nor shall any Local Officer or subrecipient employee accept a gift with a value in excess of \$100 unless such a gift is accepted on behalf of the subrecipient by the supervising Contract Employee prior to its receipt.

In accordance with [24 CFR 570.611](#), [2 CFR 200.318](#), and [2 CFR 200.112](#), no Covered Individuals (defined as employee, agent, consultant, officer, or elected official who exercise or have exercised any functions or responsibilities with respect to CDBG-DR activities assisted, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities), may obtain a financial interest or benefit from a CDBG-DR assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-DR assisted activity, or with respect to the proceeds of the CDBG-DR assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

A subrecipient must have conflict of interest written standards of conduct for governing employees, officers, or agents engaged in the award or administration of contracts.

### Separation of Duties

Subrecipients must be vigilant to eliminate the possibility of fraud in the procurement process. One of the most important checks and balances to limit fraud is through the separation of duties of staff. The person tasked with ordering the goods or managing the procurement process should be different from the person receiving and accepting the goods and the person paying for the order. When this is not possible due to the limited size of staff, subrecipients should have additional rules in place, such as limiting dollar authorizations and periodic reviews by an independent individual. Subrecipients should ensure that only designated individuals have the authority to make binding contracts. If the subrecipient has a small staff, there should be a procedure in place to provide for independent oversight. The subrecipient's procurement procedures should outline the positions involved in the procurement process, the responsibilities of each position, a formal system of authorization and review, and separation of duties. Therefore, if an employee is responsible for funds, mail, or any goods that are purchased that employee should not be responsible for any of the accounting.

### Open Competition

Subrecipients must have and use documented procurement procedures consistent with the standards of [2 CFR 200.318](#), [200.319](#) and the procurement requirements established by DCA. CDBG-DR procurements must be conducted in a manner that ensures full and open competition. Actions that might restrict competition would include:

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specificizing only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement.
- Any arbitrary action in the procurement process.

### Time and Material Contracts

Subrecipients may use "time-and-material" type contracts *only* after a determination that no other contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk.

### Local Preference

The Federal procurement regulations in [2 CFR 200.319\(c\)](#) prohibit the use of statutorily or administratively imposed local, state, and tribal geographical preferences in the evaluation of bids or proposals, except where mandated by Federal statutes, because such preferences would restrict open competition. This requirement does not override state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be



considered as a selection criterion, provided its application allows for a sufficient number of qualified firms to compete for the contract, considering the project's nature and size.

### Cost and Price Analysis and Independent Cost Estimates (2 CFR 200.324)

Per [2 CFR 200.324](#), subrecipients are required to perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (currently set at \$250,000), including contract modifications. Cost estimates must be as accurate as possible because inadequate or incorrect cost analysis that results in low bids can unnecessarily delay time sensitive projects or result in bid overages. Subrecipients shall carefully conduct and review their cost estimates and utilize safeguards such as deductible alternates in order to minimize the risk of overages that will require a re-bid. DCA requires all subrecipients to submit documentation of an independent cost estimate as part of the procurement process.

### Profit Negotiation

Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work, the contractor's risk/investment, the amount of subcontracting required, the quality of past performance, and industry rates for the area.

### Cost Plus Percentage of Cost

The cost plus a percentage of cost contract pricing must not be used.

## Methods of Procurement

Pursuant to [2 CFR 200.320](#), subrecipients must select from one of four methods of procurement based on the type of products and/or services being procured and their cost. **As a reminder, subrecipients must continue to adhere to State and local procurement requirements and will follow the most restrictive thresholds/requirements.** The thresholds below are defined in the Federal Acquisition Regulations (FAR).

### Micro-purchases (<\$10,000)

Subrecipients may award contracts for the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000, unless further limited by local law. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the subrecipient considers the price to be reasonable based on research, experience, purchase history, or other information, and documents its files accordingly. To the maximum extent practicable, the subrecipient should distribute micro-purchases equitably among qualified suppliers. As with all CDBG-DR expenditures, the costs must be reasonable, allowable, and allocable.

[2 CFR 200.320\(a\)\(1\)\(iv\)](#) allows for subrecipients to establish a threshold higher than the micro-purchase threshold identified in the FAR, up to \$50,000. If a subrecipient would like to leverage this provision, it should reach out to DCA directly to discuss the associated requirements.



### Small Purchase Procedures (\$10,000-\$249,999)

The small purchase procedures allow subrecipients to acquire goods and services—the aggregate amount of which is higher than the micro-purchase threshold but does not exceed the Simplified Acquisition Threshold, currently set at \$250,000—without publishing a formal request for proposals or invitation for bids. In the event the subrecipient is purchasing materials that will exceed \$249,999, it shall use the sealed bid process or the request for competitive proposals process. The small purchases method can also be used to acquire eligible types of services, such as consulting, environmental review, or planning.

In general, the small purchases procedures also should not be used to acquire construction contractors; subrecipients shall ensure that these acquisitions occur under the sealed bid approach described below or the Requests for Proposals (RFP) approach for individual housing rehabilitation or reconstruction contracts as outlined below.

Under [2 CFR 200.320\(a\)\(2\)](#), subrecipients using the small purchase procurement method shall send a request for quotes to potential vendors with a detailed description of the goods or services needed. In return, it shall receive three competitive written quotations which is determined by an adequate number of qualified sources, each quote should include pricing information that allows subrecipients to compare costs across bidders and ensure cost reasonableness. Documentation of the quotes shall be maintained in the subrecipient's files. The award shall be made to the lowest responsive and responsible source. If the subrecipient is unable to receive the adequate number of quotes they should contact DCA.

### Competitive Sealed Bids

As defined in [2 CFR 200.320\(b\)\(1\)](#), sealed bids are a procurement method in which bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

In order for sealed bidding to be feasible, the following conditions should be present:

- A. A complete, adequate, and realistic specification or purchase description is available;
- B. Two or more responsible bidders are willing and able to compete effectively for the business; and
- C. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

The Competitive Sealed Bids method of procurement is used when clearly detailed specifications for the goods or services to be procured can be prepared, and the principle basis for award is cost.

The sealed bid method is the required method for procuring CDBG-DR-funded construction work with estimated costs in excess of the Simplified Acquisition Threshold, however, local procurement thresholds may be lower/more restrictive and should be adhered to.

The following requirements apply to the competitive sealed bid procurement process ([2 CFR 200.320\(b\)\(1\)](#)):

- Competitive sealed bids are initiated by publishing an Invitation for Bids (IFB)

- The IFB must be advertised in the newspaper of largest circulation in the jurisdiction at least one time for the recommended timeframe of not less than seven (7) days or more than twenty-one (21) days before the date set for the opening of bids.
- The IFB must also be publicized by distributing the IFB to a list of qualified contractors.
- The subrecipient must include MBE/WBE and Section 3 firms on solicitation lists and send them an IFB.
- The IFB must include specifications that define the services or items required for the bidder to properly respond.
- Sufficient response time prior to the date set for opening the bids.
- Factors like discounts, transportation cost, and life cycle costs must be considered where specified in bidding documents. Payment discounts considered only when usually taken advantage of.
- [2 CFR 200.326\(a\)](#) requires a bid guarantee from each bidder equal to five percent (5%) of the bid price. This guarantee serves as an assurance that the chosen contractor will execute the contract within the time specified.
- All bids must be publicly opened at the time and place stated in the IFB.
- The bids must be tabulated and reviewed.
- Any or all bids may be rejected for a sound documented reason.
- Preparation and signing of a contract formalizing a scope of work and the term of compensation is required.
- The contract awarded 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 what order 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. Subrecipients may only use this method to procure architectural and engineering professional 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 is not acceptable. ([2 CFR 200.324\(d\)](#)) This means that standard architectural and engineering contracts cannot be used without changing the fee structure that is based on a percentage of costs. The contract must also have a not to exceed clause.**

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 (generally only for engineering services). In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the subrecipient should provide or make available any materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions.

The following requirements apply to the competitive negotiations in the procurement process:

- The RFP or RFQ must be advertised in the newspaper of largest circulation in the jurisdiction for a recommended timeframe of at least one time for not less than seven days or more than 21 days before the date set for the opening of proposals.
- The subrecipient must include MBE and WBE firms on solicitation lists and send them the RFP or RFQ.
- If an RFP is used, it must specify the scope of services to be provided and the type of contract to be used, which should be either fixed price or an hourly rate with a not to exceed figure.
- An RFP must 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.
- The RFP or RFQ must also be distributed to a list of qualified firms.
- All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing.
- There must be at least two proposals from qualified sources to permit reasonable competition.
- 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 RFQ or RFP.
- 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 subrecipient must maintain documentation of cost reasonableness for all services and reasons for selection.
- The subrecipient must prepare and sign a contract formalizing the scope of work and the terms of compensation.
- The subrecipient must promptly notify unsuccessful offerors.

### Noncompetitive Procurement

Noncompetitive procurement is procurement through solicitation of a proposal from one source and is often referred to as sole source procurement ([2 CFR 200.320\(c\)](#)). A contract may be awarded by noncompetitive procurement *only* when the award is impracticable under small purchase procedures, competitive sealed bids, or competitive negotiations and one or more of the following circumstances applies:

- 1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
- 2) The item is available only from a single source;
- 3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- 4) DCA expressly authorizes a noncompetitive procurement in response to a written request from the subrecipient; or
- 5) After solicitation of a number of sources, competition is determined inadequate.

**The use of the noncompetitive procurement method must be authorized in writing by DCA prior to utilizing this method.**

The following requirements apply to the noncompetitive 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 are required.

## Procurement of Professional Services

This section describes steps that are required to help ensure subrecipients comply with federal and state procurement requirements in the procurement of professional services (such as Grant Administrators, Consultants, Design Firms). The subrecipient cannot turn these steps over to their existing contractor to complete as this would violate the goal of maintaining open competition.

**It is recommended that all professional services, including those under the Simplified Acquisition Threshold, are procured competitively in order to ensure the subrecipient is receiving a high qualified provider that is cost reasonable.**

### Step 1: Establish a Contract Procurement File

The subrecipient must create and maintain a procurement file in order to document compliance with procurement requirements. At the end of the process, the procurement file must contain the following items:

- Evidence of advertisements requesting proposals or qualifications;
- A listing of firms that were sent the RFP/RFQ directly;
- A copy of the RFP/RFQ, including a description of the method used to select professional services;
- RFQ qualification statements received, or RFP responses received;
- Written evaluation of statements/responses received;
- Written statement explaining the basis for selection; and
- Written evidence that proposals/costs were determined to be reasonable.

### Step 2: Solicit Proposals

The first step in preparing a solicitation is determining the scope of work. The subrecipient must clearly define the services requested and the factors to be used in the evaluation and selection process. The competitive negotiation method is used to procure professional services in excess of the Simplified Acquisition Threshold, set at \$250,000, for which the subrecipient will issue either an RFP or RFQ, however, it is subject to State and local procurement thresholds which may require a lower dollar threshold for the competitive procurement of professional services. Subrecipient must follow the most restrictive policy.

### Step 3: Review Submissions

After the qualifications from the RFQ or proposals in response to the RFP have been received, the subrecipient should start the review process according to the established selection criteria.

The process should be thorough, uniform, and well-documented. The review should be conducted by a committee composed of at least three people who have technical knowledge of the type of project being considered. However, these reviewers should have no potential conflicts of interest with any of the firms or individuals under review.

Evaluation criteria should include:

- 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 and cost control.
- 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.
- 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).

*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 4: 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. Prior to award, the eligibility of the selected firm to be awarded a CDBG-DR funded contract must be verified using <https://SAM.gov>. Subrecipients must document the SAM.gov debarment check in their procurement files.

## Procurement of Construction Services

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

### Step 1: Establish a Contract Procurement File

The subrecipient must create and maintain a procurement file in order to document compliance with procurement requirements. At the end of the process, the procurement file must contain the following items:

- Copies of the invitation for bid;
- Newspaper tear sheets advertising the invitation for bid;
- A listing of firms contacted directly;
- Copies of all addenda;
- Evidence all bidders received notice of any addenda;
- Copies of all bids received;

- Bid tabulations and evaluation of bids; and
- Signed minutes of the bid opening.

### Step 2: Bid the Contract

The bid package must be prepared with the correct wage decisions and labor requirements included. Bids must be solicited by public advertising, and must conform to the Uniform Code, State law, and local ordinance with respect to the number of times advertised and scheduled.

All construction contracts that exceed the Simplified Acquisition Threshold (currently \$250,000) and do not qualify for noncompetitive procurement under [2 CFR 200.320\(c\)](#) require public advertisement/solicitation ([2 CFR 200.320\(b\)](#)). The advertisement must also call the bidders' attention to the requirement for prevailing wages as well as Section 3, equal opportunity, and other related requirements including bonding. In order to give maximum opportunity to small and minority firms, bid advertisements must also be sent to the MBE/WBE firms.

### Step 3: Issue Addenda

If the bid document is amended during the advertisement period, an addenda must be sent to all bidders who have received bid documents. However, addenda may be issued only up to seventy-two (72) hours before bid opening. If an addendum is necessary within the seventy-two (72)-hour period before the scheduled bid opening, the bid opening date must be extended at least one (1) week. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files. (Any applicable revision to the wage determination must also be distributed as an addendum.)

### Step 4: Confirm Wage Rates

A revised wage determination issued at least 10 calendar days before the opening of bids is effective with respect to the solicitation and contract. If a revised wage determination is issued less than 10 calendar days before the opening of bids, it is effective with respect to the solicitation and contract unless the subrecipient finds that there is not a reasonable time still available before bid opening to notify bidders of the revision and a report of the finding is inserted in the contract file. Therefore, nine (9) days before bid opening, the subrecipient must determine if there have been any modifications or revisions to the Davis-Bacon wage rate decision. The subrecipient should document the determination made in a memorandum saved to the contract file and associated Labor Standards File (recommended memo title: "Nine-Day Wage Determination Call"). If modifications have been made before the scheduled bid opening, the subrecipient is liable for the difference between the original and any recently modified rates. The subrecipient will then send it as an addendum to all contractors who received the original bid package no later than seventy-two (72) hours prior to bid opening.

### Step 5: Open Bids

All bids received should be logged in with the time/date of receipt, name of bidder, and assigned a number. All bids received must remain sealed and in a safe place until the bid opening. On the date scheduled, the public bid opening should be conducted in a businesslike manner. Prior to opening bids, the subrecipient should state the engineer's estimate on each contract to be awarded. The bids should be read aloud during the bid-opening meeting and the apparent low bidder should be determined during the bid opening.



- The bids must also be reviewed for both technical and legal responsiveness of bids.
- In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required.

Minutes of the opening must denote the apparent low bidder, include a bid tabulation, and be signed and placed in the contract file.

### Step 6: Award the Contract

After review of the bids, the 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. (A contract is awarded by official action of the local governing body.) More than 30 days may be required if the project is bond financed, financed with federal funds not available at the time bids are received, the legislature must act before funds are available, or other extenuating circumstances exist. If the subrecipient expects to require more than 30 days to award, the advertisement and bid document should so state.

**Caution: Contracts are to be awarded within a 90-day period. If 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 bids are held longer than 90 days, the subrecipient must make a “90-Day Call” to DCA to determine if any modifications have occurred.**

If the contract is awarded to a bidder other than the low bidder, the subrecipient must prepare a written statement explaining why each lower bidder was deemed non-responsive 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 subrecipient must check the contractor and all subcontractors' names against the Exclusions List available at [SAM.gov | Search](https://sam.gov). The grantee must document that the contractors and subcontractors are not on this list.
- The bidder may also be determined non-responsive if, in the subrecipient'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 subrecipient should always contact its attorney and its DCA Program Advisor if the subrecipient must award to other than the low bidder.

### Step 7: Contract Execution and Notice to Proceed

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, bid proposal, executed contract, contractor certifications, and bond and insurance forms. The subrecipient must send all contract documents to DCA for review within 10 days of contract execution. DCA will review the contract document and then issue a Notice to Proceed to the subrecipient, allowing them to commence project activities. Subrecipients and their contractors cannot commence work until DCA has issued the Notice to Proceed.



Recordkeeping

Subrecipients should maintain a procurement file for every procurement action taken with CDBG-DR funds. The procurement file should tell a clear story of the method of procurement selected, steps for selection, and compliance with all procurement requirements. The subrecipient should utilize the Procurement Checklist to maintain a record of compliance for all procurements.

Source Documents

File Name	Procurement Checklist (Attachment)
File Name	Subrecipient Section 3 Action Plan (Attachment)
File Name	Section 3 Certification of Acknowledgement (Attachment)