

Introduction

Recipients involved in procurement and contracting for services related to CDBG funding and activities need to ensure that all applicable Federal requirements are followed throughout the process. Local jurisdictions often have their own procurement and contracting requirements; however, the use of Federal funding requires compliance with Federal regulations at a minimum.

This chapter describes the policies and procedures that must be followed when entering into contractual agreements with other entities when CDBG funds are being used. Such entities may include subrecipients, other governmental agencies, professional services firms, construction contractors, providers of goods and services, and others.

Section 1 - General Policies

The primary purpose of the procurement procedures is to assure free and open competition is achieved. This chapter provides details on the specific requirements of the State CDBG Program and 2 CFR Part 200.

Recipients are responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts and for taking appropriate action when performance problems arise.

Procurement requirements for the State CDBG Program are a combination of 2 CFR Part 200 and requirements specific to the South Carolina CDBG Program.

No bidding for construction or demolition activities may occur until the appropriate environmental clearance and approval has been provided by Grants Administration.

Generally, acquisition of all property required for the project must be complete in accordance with URA prior to taking bids for construction (or demolition).

CH 8: PROCUREMENT AND CONTRACTING

Section 2 - Written Procurement and Selection Procedures

All CDBG recipients must have and abide by written procurement and selection procedures that are equivalent or essentially comparable to those required by state CDBG requirements or 2 CFR 200. All procurements funded with CDBG monies must ensure maximum open and free competition and ensure that supplies, services and construction are obtained efficiently and economically. Awards must also be made to responsible and responsive firms. Federal requirements do not allow geographical preferences for local contractors that are not the low bidder, unless the preference is made for Section 3 Businesses.

If applicable local and Federal procurement and contracting requirements differ, then the recipient must comply with the more stringent requirement.

Grantees are responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims.

Local procurement procedures must include protest procedures, reflect applicable State Laws and meet standards outlined below.

Standards of Conduct

The recipient must maintain a written code or standards of conduct to govern the performance of its officers, employees or agents in contracting with and expending CDBG funds. Grants Administration has elected to use the State standards of conduct rather than those found in 2 CFR Part 200. These standards must, at a minimum, comply with the ethical standards of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991.

Refer to the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (included in the *Reference Manual*) as well as Chapter 14 of this manual for more information on conflict of interest.

Open Competition

All procurement transactions entered into by the recipient, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All potential offerors must be advised that the application with cost estimate is available for review. The recipient must be alert to organizational conflicts of interest or non-

CH 8: PROCUREMENT AND CONTRACTING

competitive practices, which may restrict or eliminate competition or otherwise restrain trade.

Examples of what is considered to be restrictive of competition include, but are not limited to:

- ◆ Placing unreasonable requirements on firms in order for them to qualify to do business.
- ◆ Non-competitive practices between firms or between affiliated companies.
- ◆ Non-competitive awards to consultants that are on retainer contracts.
- ◆ Organizational conflicts of interest.
- ◆ Contractors who develop specifications, statements of work, invitations for bids or requests for proposals that later bid on project
- ◆ Specifying only a brand name product or manufacturer instead of allowing an equal to be offered without prior written approval from GA (may result in rebidding).
- ◆ Specifying subcontractors to be used.
- ◆ Unnecessary experience and excessive bonding requirements.
- ◆ Any arbitrary action in the procurement process.

Small & Minority Business Involvement

HUD and the State encourage and support the involvement of small, minority and woman-owned business firms (MWBE) in CDBG projects. Accordingly, affirmative steps must be taken to assure that small, minority and woman-owned businesses have the opportunity to provide supplies, equipment, construction and services. Affirmative steps include the following:

- ◆ Maintain a list of MWBE.
- ◆ Ensure that qualified MWBE are included on solicitation lists.
- ◆ Assure that MWBE are solicited whenever they are potential sources.
- ◆ Where the requirement permits, establish delivery schedules that will encourage participation by MWBE.
- ◆ Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MWBE.
- ◆ Use 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.

CH 8: PROCUREMENT AND CONTRACTING

- ◆ The Governor's Office of Small and Minority Business Assistance includes a directory of certified minority and female-owned small businesses on its website at www.govoep.state.sc.us/osmba/.

If any subcontracts are needed, the prime contractors are encouraged to take the affirmative steps listed above.

Procedural Requirements

All CDBG procurement procedures must incorporate the following procedural requirements:

- ◆ Include a clear and accurate description of the technical requirements for the material, product, or service to be procured. This description must not, in the case of competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, set forth minimum essential characteristics and standards to which it must conform to be satisfactory.
 - When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or approved equal" description may be used as a means to define the performance or other important requirements of a procurement action. The specific features of the named brand that must be met by offerers must be clearly stated. **Approval by Grants Administration to use a specific brand must be obtained prior to bidding.**
- ◆ Clearly set forth all requirements which offerers must fulfill and all other factors to be used in evaluating bids or proposals.
- ◆ Grantees may use State excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- ◆ Awards shall be made only to responsive and responsible contractors who possess the ability or have access to resources to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- ◆ Proposed procurement actions must be reviewed by recipient officials to avoid purchasing unnecessary or duplicative items.

Recipients must perform some type of cost or price analysis in connection with every procurement, including contract modifications, and must only permit allowable costs to be included.

CH 8: PROCUREMENT AND CONTRACTING

- ◆ **The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used and this requirement shall supersede any conflicting provision in an executed contract funded in whole or in part with CDBG funds.**
- ◆ Contracts with other public agencies will only allow actual costs to be paid.
- ◆ Recipients must maintain sufficient records to detail the significant history of a procurement. These records must include, but are not necessarily limited to:
 - Information pertinent to the rationale for the method of procurement,
 - Selection of contract type,
 - Contractor selection or rejection, and
 - The basis for the cost or price.
- ◆ Recipients must maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions and specifications of their contract.

No profit is allowable when contracting with other public agencies.

Protests of Contract Awards

Generally, a recipient must allow for a ten day waiting period prior to an intended contract award to allow for possible protests of the procurement. All protests of intended contract awards are to be resolved at the local level in accordance with written local procurement policies. In any case of the protest of an intended award of a contract funded in part or in whole with CDBG funds, Grants Administration must be notified immediately.

Section 3 – Section 3 Requirements

This section of the Housing and Urban Development Act of 1968, as amended in 1992, requires that training, employment and contracting opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide employment opportunities to low-and very low-income persons.

Thresholds and Applicability

Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of CDBG funds **for the following Section 3 covered projects:** housing rehabilitation; housing construction; and other public construction. The requirements apply to recipients

CH 8: PROCUREMENT AND CONTRACTING

or subrecipients of CDBG assistance for Section 3-covered project(s) for which the amount of the assistance exceeds \$200,000. The Section 3 requirements apply to the entire project or activity that is funded with CDBG assistance (subject to the threshold requirements), regardless of whether the Section 3 activity is fully or partially CDBG funded. Section 3 does not apply to contracts for the purchase of supplies and materials, unless the contract includes labor, such as the installation of the materials.

Recipients must make all bidders and contractors aware of the Section 3 requirements and take appropriate steps to promote and encourage the hiring of Section 3 workers. and Business Concerns.

A Section 3 worker is:

- ◆ Any worker who currently or when hired (within the past five years) is documented to fit at least one of the below categories:
- ◆ The worker's income for the previous or annualized calendar year is below the income limit established by HUD; or
- ◆ The worker is employed by a Section 3 business concern
- ◆ The worker is a YouthBuild participant

A Targeted Section 3 worker is defined as:

- ◆ A worker employed by a Section 3 business concern; or
- ◆ A worker who currently fits or when hired (within the past 5 years) is documented to fit at least one of the following categories:
- ◆ Living within the service area or the neighborhood of the project, meaning; or
- ◆ A YouthBuild participant.

A Section 3 Business Concern is defined as a business:

- ◆ That is 51 percent or more owned and controlled by low- or very low-income persons; or
- ◆ For which over 75 percent of the labor hours performed for the business over the prior 3-month period were performed by Section 3 workers; or
- ◆ That is at least 51 percent owned and controlled by current public housing residents; or residents who currently live in Section 8-assisted housing.

HUD has included a Business Registry the Section 3 Opportunity Portal to help match Section 3 Workers to jobs and training opportunities and Section 3

CH 8: PROCUREMENT AND CONTRACTING

Businesses to contracting opportunities. Worksheet on its website to assist in determining whether a business qualifies as a Section 3 Business Concern. Section 3 Opportunity Portal - Home (hud.gov).

The **Service area or neighborhood of the project** is defined as:

- ◆ The area within a mile of the project, or if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census. The attachments to this Chapter include an information sheet for businesses and contractors that should be included in the bid package. The Contract Special Provisions will include Section 3 requirements and contractors are required to prepare and submit forms regarding business utilization, even if there are no new hires anticipated. The Recipient must submit reports to Grants Administration regarding Section 3 compliance and document all efforts to meet these requirements.

The attachments to this Chapter include an information sheet for businesses and contractors that should be included in the bid package. The Contract Special Provisions will include Section 3 requirements and contractors are required to prepare and submit forms regarding Section 3 Business Concern Certification, Section 3 and Targeted Section 3 Workers Self-Certification, Section 3 Labors Hours Tracking Form. The Grantee must submit reports to Grants Administration regarding Section 3 compliance and document all efforts to meet these requirements.

Procurement Procedures

Section 3 encourages, to the maximum extent feasible, a preference for Section 3 Businesses in the evaluation of bids or proposals. However, Section 3 does not supersede the general requirement of 2 CFR Part 200 that all procurement transactions be conducted in a competitive manner.

Geographic preference is generally not allowed for competitive bids, but Section 3 consideration may be included as an evaluation factor in procurements where price is not the sole determining factor or when a business will help the project meet Section 3 labor hour goals. Recipients must include Section 3 information in all bid packages on projects that receive \$200,000 or more of CDBG assistance:

- ◆ *Section 3 Information Sheet for Contractors/Business Concerns* – Explains what the Section 3 requirements are and what is required of contractors and Grantees.

CH 8: PROCUREMENT AND CONTRACTING

- ◆ *Section 3 Business Concern Certification Form* – Used to assist Grantees certify and track Section 3 Business Concerns seeking a preference in contracting.
- ◆ *Section 3 and Targeted Section 3 Worker Self-Certification Form- Assist contractors and subcontractors certify and track Section 3 Workers and Targeted Section 3 Workers seeking certification and preference in employment.*
- ◆ *Section 3 Labor Hours Tracking Form* – Included in the bid package as a report to be filled out and submitted at the conclusion of the contract by the Grant Administrator which identifies the actual numbers of hours worked by Section 3 workers and targeted workers for the entirety of the project.
- ◆ *CDBG Contract Special Provisions* – Contains Section 3 clause.

Also, the recipient must discuss Section 3 requirements at the pre-construction conference and determine what efforts are being made to comply.

Required Prioritization Effort: Contractors and subcontractors must, to the greatest extent feasible, provide training and employment opportunities to Section 3 workers and targeted workers within the metropolitan area (or nonmetropolitan county) in which the project is located, and give priority for opportunities and training to:

- ◆ Section 3 workers residing within the service area or neighborhood of the project and
- ◆ Participants in YouthBuild programs.

Contractors are responsible for informing subcontractors of the requirements and for documenting compliance by any subcontractors. The Contractor must submit reports on the actual employment and utilization of Section 3 workers or business concerns. The Section 3 regulation does not require employment of a Section 3 worker who does not meet the qualifications of the position to be filled. Contractors are also required to submit final reports on their efforts prior to receiving the final payment. A business seeking to qualify as a Section 3 Business Concern bears the responsibility to certify or to submit evidence that the business qualifies. A Section 3 Business Concern must also submit evidence, if requested, to demonstrate the ability to perform successfully under the terms and conditions of the proposed contract. A *Section 3 Business Concern Self Certification* form is provided in the Attachments.

CH 8: PROCUREMENT AND CONTRACTING

General Compliance

Recipients and covered contractors may demonstrate compliance with the “greatest extent feasible” requirement of Section 3 by meeting numerical goals for providing new employment, training, and contracting opportunities to Section 3 Worker and Targeted Workers and Section 3 Business Concerns. Numerical goals apply to contracts awarded in connection with all Section 3-covered projects and Section 3-covered projects. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold) must demonstrate compliance by achieving the Section 3 Safe Harbor Benchmarks:

- ◆ Certifying that they have followed the required prioritization effort;
- ◆ Ensuring at least 25 percent of all labor hours worked on a Section 3-covered project are worked by Section 3 Workers; and
- ◆ Ensuring at least 5 percent of all labor hours worked on a Section 3-covered project are worked by Targeted Section 3 Workers.

If a recipient and contractor and subcontractor do not achieve the Section 3 safe harbor benchmarks, reports must be submitted describing the qualitative nature of the Section 3 efforts. Qualitative efforts may include the following:

- ◆ Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- ◆ Provided training or apprenticeship opportunities.
- ◆ Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- ◆ Provided or connected Section 3 workers with assistance in seeking employment.
- ◆ Connected residents to job placement services.
- ◆ Held one or more job fairs.
- ◆ Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).
- ◆ Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

CH 8: PROCUREMENT AND CONTRACTING

- ◆ Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- ◆ Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- ◆ Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- ◆ Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- ◆ Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- ◆ Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act. Additional information on Section 3 requirements for CDBG Recipients is included in Chapter 12: Fair Housing and Equal Opportunity and in the Chapter 12 Attachments.

Section 4 - General Procurement Requirements

Cost Estimates

Recipients must perform some type of cost or price analysis in connection with **every** procurement, including contract modifications, and must only permit allowable costs to be included. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or request for proposals must be excluded from competing for such procurements (2 CFR Part 200). This cost estimate shall be in the form of a public body estimate and may include, but not be limited to, the following sources:

- ◆ Researching vendors,
- ◆ Inquiring of other local governments for similar procurements, or
- ◆ Inquiring of trade associations.

All methods of procurement **must** have documentation that a cost estimate was conducted. Such analysis must be submitted to Grants Administration for review, along with the contract submission.

CH 8: PROCUREMENT AND CONTRACTING

Methods of Procurement

The appropriate method of procurement is determined by the aggregate dollar amount of goods or services acquired from a single source. Items purchased with CDBG funds, in whole or part, may not be categorized into activities in order to avoid these requirements. The following sections describe each method in further detail.

Small Purchase Procedures

The small purchase procedures allow recipients to acquire goods and services totaling no more than **\$150,000**, 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. In the highly unlikely event that a recipient is purchasing materials that will exceed \$150,000, they must use the sealed competitive bid process. The small purchases method can also be used to acquire eligible types of services, such as professional consulting, environmental review, or planning. This method cannot be used if the services contract will exceed \$150,000 in value. If the services contract will exceed \$150,000, the recipient must issue an RFP under the competitive proposals approach (see below). **Note that engineering and architectural services cannot be procured using the small purchase method and must always be acquired using the competitive proposal approach.**

Grants Administration must review all small purchase contracts of \$25,000 or more (and professional services contracts over \$5,000) prior to their execution.

The small purchase procedures also cannot be used to procure construction contractors. These acquisitions must occur under the competitive sealed bid approach outlined below.

- ◆ Under the small purchases method, recipients send a written 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. Since this process does not require a public advertisement, written quotes must be received in response to written solicitations from a minimum of **three qualified sources**. Each quote must include pricing information that allows the recipient to compare costs across bidders and ensure cost reasonableness.
- ◆ Documentation of the quotes shall be attached to the purchase requisition and maintained in the recipient's files.
- ◆ The award shall be made to the lowest responsive and responsible source.

CH 8: PROCUREMENT AND CONTRACTING

Competitive Sealed Bids (Formal Advertising)

Competitive sealed bids (Formal Advertising) must be used for all construction contracts or for goods costing more than \$150,000. As noted above, the only exceptions to this rule are owner-occupied housing rehabilitation projects where the total cost does not exceed \$150,000. These projects may be conducted under the small purchases method.

Competitive sealed bidding requires publicly solicited sealed bids and a firm-fixed-price contract (to include unit price and quantities) is awarded to the responsible bidder whose bid, conforming with 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 a recipient's business.
- ◆ 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.

Under 2 CFR 200.320, two or more responsible bidders are willing and able to compete effectively for the business

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 directly solicited from competent vendors. Direct solicitation efforts must be documented. The publication must be published at least one time in a newspaper of general circulation 30 days prior to bid opening and/or published in the Dodge Room/Associated General Contractors (AGC) or other trade publication of general circulation. If the publication period is not of sufficient time to attract adequate competition, the bid will have to be re-advertised.

A shortened bid period may be requested in advance and will only be approved by Grants Administration when there are extenuating circumstances. Examples of such circumstances include:

- The project has been bid several times, documentation exists for each bid, and other funding is in jeopardy.

CH 8: PROCUREMENT AND CONTRACTING

- The project must get underway or be completed in order to meet the timeline of an industry which has committed to begin operations and create jobs.
- There is a local emergency affecting health and safety which will be addressed once the project is complete.
- ◆ Bid Advertisement: The advertisement must indicate that it is an Invitation to Bid and that project funding is being provided by CDBG and that federal requirements will apply to the contracts. It should also include the title of the project and brief scope of work, the name of the procurement entity, how to get copies of technical specifications and bid package, submission instructions and deadlines, public bid opening date, time and place (competitive bids) and any other appropriate instructions. Buy America Build America Act (BABA) language should also be included.
- ◆ 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. The bid package must also include all contractual terms and conditions applicable to the procurement.
- ◆ Itemized Costs: Bids must show the quantity and cost of each line item. Lump sum bids and/or bid items that are not specifically identified or are generally grouped as “miscellaneous” or “contingency/allowances” are not allowed.
 - Bids for buildings must include itemized costs for each structural building system (i.e., framing, electrical, plumbing, etc.)
 - Bids for water/sewer service connections must be included as a separate division (and also separated on pay requests).
 - Bid all ineligible work to be paid with non-CDBG funds as a separate division (and also separate on pay requests).
 - Review bid forms prior to soliciting bids in order to avoid inappropriately bidding ineligible items.
 - Additive or deductive alternates may be used to allow additional options for contracting. This option may help to avoid the need to rebid or negotiate if bid costs are different than initial estimates.
- ◆ Receipt and Safeguarding of Bids: All bids, including modifications, received before the time of opening must be kept secure and unopened.
- ◆ 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 the bids.

No lump sum bids, miscellaneous, allowances, or contingency line items are allowed. Use of these may require re-bidding.

CH 8: PROCUREMENT AND CONTRACTING

- ◆ 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 Bids: A bid may be rejected when sound, documented business reasons exist. The bid documents must include a provision that explains the basis for such decisions. When the lowest bid is rejected, the Project Engineer must provide a recommendation for the selected bidder and document the reason. Additionally, an opinion from the local attorney that this action is consistent with local procurement policies and terms of the bid documents may be required. Such documentation shall be made a part of the files.
- ◆ Negotiations after Unsuccessful Competitive Sealed Bidding: Negotiations are permitted within the following guidelines, which consider that time or other circumstances will not permit a re-solicitation of competitive sealed bids.
 - When bids received pursuant to an invitation for bids exceed available funds and it is determined in writing from the procuring agency that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated with the lowest responsive and responsible bidder, provided that the low bidder's base bid, less any deductive alternates, does not exceed available funds by an amount greater than ten percent (10%) of the construction budget established for that portion of work. The negotiated price must be lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation.

The procuring agency may make a minor change to the scope of work (with prior approval from Grants Administration) to reduce the cost to be within the established construction budget. However, the procuring agency may not reduce the cost below the established construction budget by more than ten percent (10%) as a significant change in scope will require re-bidding.
- ◇ Grantees are required to submit documentation of bid negotiations. The following documentation must be submitted with a negotiated contract for Grants Administration approval:
 - A narrative explaining the negotiation process. Document that the low bidder had an opportunity to negotiate their bid by submitting a copy of the written notice given to the bidder including the revised bid due date, the revised bid form, and any revised contract documents and specifications.

CH 8: PROCUREMENT AND CONTRACTING

- A revised bid and a written certification from the low bidder agreeing to the negotiated bid.
- When the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the procuring agency is able to identify additional funds for the project, in the amount of the difference between the lowest base bid and the approved available funds for the project, the procuring agency shall submit its request to use those additional funds to Grants Administration.

Competitive Sealed Proposals

Competitive sealed proposals are used in two instances: (1) the acquisition of any engineering or architecture services or (2) the purchase of other professional services where the total cost will exceed \$150,000. Under this procurement method, the recipient must publish a written request for submissions and then review these submissions based on established selection criteria. This method of procurement differs from the small purchases method in that the solicitation must be published and cannot be restricted to a smaller or limited number of bidders.

Under this approach, there are two possible methods of soliciting proposals. A **request for proposals** asks that offerers submit both qualifications and cost information. A **request for qualifications** only asks for information on the offerer's expertise/ experience and not on cost. When acquiring any service that is not architecture or engineering, the full RFP process must be used. For example, if a recipient were to hire a for-profit CDBG contract administrator and that contract exceeded \$150,000, an RFP would be required.

Architectural firms may be procured by the RFP procedure **only if cost is not an initial factor** of consideration, as State law prohibits compensation from being an initial factor of consideration.

When acquiring architectural or engineering services, either a RFP or a RFQ may be used. GA recommends the use of an RFP process when feasible or practical, since it provides the recipient additional information. Note that if an architectural or an engineering firm is being hired to provide a non architectural/engineering service, that service must be procured using either the small purchases process or a RFP. For example, some engineering firms also provide construction and grants management services. In that situation, a RFQ cannot be used and either the small purchases (if it is less than \$150,000) or a RFP must be used.

Request for Proposals: When a RFP process is required, the recipient must develop a written document outlining the scope of the services and the selection criteria. The scope must be sufficiently detailed so that potential bidders are

CH 8: PROCUREMENT AND CONTRACTING

able to develop effective pricing proposals and submit appropriate qualifications. The RFP process is as follows:

- ◆ Proposals are directly solicited from qualified firms in addition to a published advertisement. Direct solicitation efforts must be documented. The RFP must include a summary of the scope of work and the type and relative weights of the evaluative criteria. The RFP must also include a request for technical and cost information (except for architectural). Cost information must be provided as a fixed price, depending upon the recipient's project.
 - RFPs must be published at least fifteen days before the proposals are due.
 - Evaluative criteria may include, but not be limited to: qualifications of project personnel, education, past performance and related experience on previous projects completed, experience with the CDBG program, experience and/or familiarity with the existing locality's system, recent and current as well as projected workload, and ability to meet time and budget requirements. If the scope of work allows room for differing types of approaches, the recipient may wish to award points for the most appropriate or effective approach. For example, if hiring an architect to design a new community center, the recipient may award points for the most creative or energy efficient design.
 - In addition, cost shall be one of the selection factors for an RFP (except for architectural). The recipient may determine how many points will be awarded for the cost factor.
- ◆ A qualified review committee rates and ranks the proposals using the published selection criteria. The recipient must document this review and the selection process. The review committee must consist of an uneven number of members, to avoid ties in the ranking process, and must include a minimum of three people. This committee is required to evaluate proposals based on the exact criteria and weights published in the bid solicitation and information to bidders.
 - If mathematical errors are discovered during the review process, the individual scorer must verify and initial the correct score.
 - The recipient may choose to interview the top ranked firms following submission and ranking of proposals. If interviews are conducted, the committee must also rank the proposals following the interviews.
- ◆ For architectural services, negotiations are entered into with the top ranked firm to determine price since it was not an initial factor of consideration in the proposal.

CH 8: PROCUREMENT AND CONTRACTING

- ◆ The recipient awards the contract to the bidder that scores highest in its assessment of how the proposal met the selection criteria. Under this procurement method, this contract need not be awarded to the lowest bidder so long as the final price is reasonable and the selection is made following the stated criteria. In some recipients, cost is used as the “tie breaker” between equally qualified firms.

Request for Qualifications: The RFQ process may only be used in two instances: (1) for complicated engineering or architectural services or (2) when the RFQ is used to narrow a pool of potential bidders and a formal RFP will follow. In any other competitive proposal instance, the RFP must be used.

The RFQ process does not request cost information at the time of solicitation. However, recipients must still ensure that all services are cost reasonable. The process for undertaking an RFQ is as follows:

- ◆ The RFQ is publicly advertised **and** qualifications are solicited.
 - RFQs must be published at least fifteen days before the qualifications are due.
 - The solicitation must include the criteria and weights to be used in reviewing qualifications.
 - Qualifications must be listed in order of importance and may include, but are not limited to: resume, previous projects completed, specific personnel to work on the project, and/or specific expertise of the firm in general. As noted above, cost is not a factor in the qualification process.
- ◆ The qualifications are reviewed by a qualified committee and ranked. The review committee must consist of an uneven number, to avoid ties in the ranking process, and must include a minimum of three people. This committee is required to evaluate qualifications based on the criteria and weights published in the solicitation.
 - If mathematical errors are discovered during the review process, the individual scorer must verify and initial the correct score.
 - The recipient may choose to interview the top ranked firms following submission and ranking of proposals. If interviews are conducted, the committee must also rank the proposals following the interviews.
- ◆ The procuring agency may either begin to negotiate with the highest ranked firm, or proposals are solicited from the highest rated firms that submitted qualifications and are ranked.
- ◆ Negotiations are then initiated with the top ranked firm.

CH 8: PROCUREMENT AND CONTRACTING

When Competitive Sealed Proposals are utilized, the following requirements apply.

- ◆ Publication Period: Proposals must be solicited from two or more qualified sources **and** an advertisement must be published. RFPs/RFQs must be published at least fifteen days before the proposals/qualifications 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: The recipient must provide a mechanism for technical evaluation of the proposals received, determinations of responsible offerer for the purpose of written or oral discussions and a recommendation of the selection for contract award.
- ◆ 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 offerors must be notified promptly.

Non-competitive Procurement

Non-competitive procurement requires **prior** Grants Administration approval and may be approved for use only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies when:

- ◆ The item is available only from a single source;
- ◆ A public exigency or emergency is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods; or
- ◆ After solicitation of a number of sources, competition is determined inadequate.

In any case, some form of cost or price analysis must be made and documented in the procurement files for non-competitive procurement actions.

Grantees are required to submit a written request documenting the rationale for a specific product or service. Attach service agreement or other documentation that the company is a single source provider (i.e. utility providers).

For contracts that require Grants Administration review, standard documentation must be submitted with the agreement to include the following:

- ◆ Complete and unexecuted contract agreement. A current copy of the CDBG Contract Special Provisions must be incorporated to the agreement.

CH 8: PROCUREMENT AND CONTRACTING

- ◆ Cost estimate from provider showing unit prices and quantities
- ◆ Recommendation to award contract from Engineer/Architect.
- ◆ Cost reasonable determination from Engineer/Architect
- ◆ Project area maps/drawings, if applicable
- ◆ Complete all standard Grants Administration forms that are applicable (i.e., *C-1 Contract Transmittal Form, Section 102 Disclosure Report, Section 3 Forms*, etc.).

Note: Davis-Bacon wage determination must be included when contracting for services, if applicable. **The only time Davis Bacon is not applicable is for contracts less than \$2,000 or for local governments providing force account labor.** See Chapter 9 for further guidance concerning Davis-Bacon applicability and regulations.

Design/Build

The Design/Build process is a method of project delivery in which one entity (design-builder) is competitively selected to enter into a single contract with the owner to provide for architectural services, engineering design services and construction services. The Design/Build process is normally for exceptionally unique or complex projects and requires a great deal of careful planning and professional execution to be successful. Design/Build projects do not easily lend themselves to compliance with CDBG procurement requirements, particularly open bidding/low bid requirements. Please contact Grants Administration for the appropriateness and applicability of the design/build process for your project. A checklist identifying key steps and information required in the Design/Build process is included in the attachments to this chapter.

Section 5 - Professional Services Contract Approval and Submission Process

Grants Administration must approve professional contracts over \$5,000 prior to award/execution, regardless of the method.

The following procedures must be followed in order to obtain Grants Administration approval:

1. Prepare a Professional Services Contract including:

Professional contracts, not including A/E Services, must meet the requirements of Small Purchase Procedures described in Section 4 of this chapter.

CH 8: PROCUREMENT AND CONTRACTING

- ◆ Effective and specific date of contract period.
- ◆ Time for performance and completion of contract services, including project milestones, if any, and any other performance measures.
- ◆ Specification of materials or other services to be provided by both parties (e.g., maps, reports, printing, etc.).
- ◆ Provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract. Cost schedules must be directly related to the scope of services. Any additional costs or reimbursable expenses must be specified in the agreement and be subject to written pre-authorization by the owner.
- ◆ *CDBG Contract Special Provisions* must be incorporated into the contract document. A list of the *CDBG Contract Special Provisions* is included in the attachments to this chapter.

Do not submit proposed contracts for Grants Administration review and approval prior to obtaining proposals.

2. The recipient must provide Grants Administration:

- ◆ Copy of the solicitation of qualifications and/or proposals which must clearly define the items or services needed in order for the offerors to properly respond to the invitation.
- ◆ Copy of proposal tabulation sheet (sample *Professional Services Evaluation* and *Review Panel Selection Summary* forms are available in the attachments to this chapter).
- ◆ Copy of the advertisement's Affidavit of Publication and offerer's list or other documentation, as may be requested, as to how responses were solicited.
- ◆ Method of evaluation of responses which include all significant factors and the relative weights used in making an award.
- ◆ Minutes of interviews, if appropriate.
- ◆ A copy of the proposed contract.

The following forms are available in the attachments to this chapter:

- *Sample Professional Services Contract*
- *Sample Professional Services Evaluation*
- *Sample Review Panel Selection Summary*
- *CDBG Contract Special Provisions*
- *Debarment Certification Form*
- *CDBG Section 102 Disclosure Form*
- *CDBG Contract Transmittal Form (C-1)*

CH 8: PROCUREMENT AND CONTRACTING

- ◆ Verification that the contractor is not on the Excluded Parties list accessed at www.sam.gov.
 - ◆ A *Debarment Certification Form*.
 - ◆ Verification that the contractor is not on the State Suspensions and Debarments list accessed at <http://procurement.sc.gov/PS/legal/PS-legal-suspend-debar.phtm>.
 - ◆ An updated *CDBG Section 102 Disclosure Form* indicating all contractors, services and the amount of the contract (only for HUD grants received by the unit of local government which exceed \$200,000 in a fixed year).
 - ◆ The *CDBG Contract Transmittal Form (C-1)* which certifies that the recipient has included all applicable provisions in the contract. The C-1 must be signed and dated by an official in charge of procurement for the recipient.
3. Grants Administration will notify the recipient in writing regarding contract approval. **No contracts may be awarded/executed until Grants Administration has given contract approval.** Failure to adhere to this policy could result in disallowed costs.
- ◆ During Grants Administration’s review of the procurement process, if mathematical errors are discovered in the review committee’s score sheets and overall ranking is affected, the Recipient will be required to re-advertise.
4. Submit the contract to the governing body for action according to standard local procedure. Award and execute the contract.

Section 6 - Procurement of Construction Services

Grants Administration must review all construction contracts of \$25,000 or more prior to award/execution. For construction service contracts, the recipient must follow these steps:

1. Plans, Specifications and Bid Package prepared.

Housing Rehabilitation contracts are excluded from Grants Administration review requirements unless the activity addressed is water and sewer line connections.

An architect or engineer will typically prepare the technical bid specifications. These specifications must provide a complete and accurate description of the specifications for materials, products, and services to be provided or performed. Make sure they include required Federal and State CDBG

CH 8: PROCUREMENT AND CONTRACTING

provisions and clauses, such as compliance with minimum standards for accessibility by the physically handicapped. (An *Architect/Engineer's Certification* for these standards is available in the attachments to this chapter.)

- ◆ Bid and contract documents must include but are not limited to the following:

- Technical specifications. Technical specifications must not specify brand names unless there is an "or equal" substitution allowed or Grants Administration has pre-approved use of a specific brand name.
- Local, State and Federal requirements for:
 - ◇ Equal opportunity requirements (including Section 3 hiring and contracting, if applicable).
 - ◇ Labor standards requirements (including a current, applicable wage decision).
 - ◇ General contract terms and conditions such as termination clauses, access to and retention of records, etc.
 - ◇ Timeframe for contract completion. **Contract agreements must not be pre-dated.**
- General industry conditions.
- Itemized cost and unit pricing information or schedule of values.
- Method of payment and amount of contract.
- Advertisement for Bid.
- Copy of proposed Contract Form.
- Bid Bond Form.
- Include a request that all bidders return bids even if they are not going to bid. Have them mark that bid "No Bid." A "No Bid" is considered a bid.
- Any qualification requirements for bidders and provisions to explain the basis for rejecting any bids as well as how bid errors will be handled.
- Bids should be effective for 60-90 days after bid opening to allow for appropriate review and approvals.
- BABA Language should also be included in all construction contracts that are funded on or after FY23.

A CDBG
Recommended
Contract Checklist
for construction
services is included
in the attachments
to this chapter.

CH 8: PROCUREMENT AND CONTRACTING

2. Prior to bidding the project, the Grant Administrator must review the bid documents to ensure that the scope of work is consistent with the approved CDBG application. A *Construction Contract Review Checklist* is included in the attachments to this chapter.

- ◆ Reviews must ensure consistency throughout the solicitation and specifications in regards to the Owner, bid expiration, contract period, etc. Also, make sure the contract period is consistent with the grant period.
- ◆ Reviews must ensure that environmental clearance and approval from GA has been obtained and all real property acquisition is complete prior to taking bids or executing contracts.
- ◆ If it is discovered that an unapproved component or activity has been added to the bid documents or significant changes have been made that delete approved activities, and this will change the scope of approved activities for which CDBG funds will be used, the Grantee must obtain Grants Administration approval before proceeding further.
- ◆ If CDBG funding is needed for additional activities, such a change may require one or all of the following documents be submitted for approval:
 - *Project Amendment Request form* including documentation of LMI benefit.
 - Public hearing evidence.
 - Revised environmental review documentation.
- ◆ If the Grantee decides to include unapproved, additional activities for which CDBG funds will *not* be used, then the Grantee must provide a funding commitment for such activities. No contract will be approved until all CDBG-funded activities have been approved.
- ◆ In general, pre-bid conferences can serve to restrict competition and should not be mandatory. The only time a pre-bid conference should be mandatory is when the nature of the project is unique or complex. The unit of local government must be prepared to provide certification that the pre-bid conference requirement is justified and will not unduly restrict competition.

3. Construction bids must be publicly solicited using sealed bids. (See Section 4 for a complete description of requirements.) Prior to bid opening:

- ◆ The invitation for bids must be publicly advertised **and** bids directly solicited from competent vendors. The publication should be published at least one time in a newspaper of general circulation 30 days prior to bid opening and/or published in South Carolina Business Opportunities (SCBO) or other trade publication of general circulation. If the publication period is not of

CH 8: PROCUREMENT AND CONTRACTING

sufficient time to attract adequate competition, the bid will have to be re-advertised. The recipient may consider a longer advertising period for more complex projects to allow bidders more time to prepare their proposals.

- ◆ Provide opportunity for local, women-owned and minority-owned businesses to participate and provide notice to Section 3 businesses.

4. Amendments or addenda to bid documents, if any, must be sent to all bidders who were sent or who obtained bid documents.

- ◆ Maintain a log of bidders who were sent or obtained bid documents and addenda. All bids received during the bidding period should be logged with the name and address of bidder, and the time and date of receipt.

5. Confirm wage decision ten days prior to bid opening.

6. Conduct a public bid opening.

- ◆ All bids must be read aloud during this meeting. Minutes of the meeting must be maintained to document the project name and number, time and date of the bid opening, bidder's name and bid amount in order of opening.
- ◆ **Do not accept late bids! They must be sent back unopened.**

7. Review bids.

- ◆ Determine if they are legally and technically responsive. Unit prices always prevail in determining the lowest bid in case of adding errors.
- ◆ Check with the State's Licensing Board for General Contractors to verify contractor's business license number and type, and the types of work the contractor is permitted to bid on or to perform under the license.
- ◆ Evaluate the contractor's capacity to perform by considering, among other things, the bidder's experience, past record of performance, references, financial data, capacity of the firm to perform within the stated time and bid amount.
- ◆ If only one bid is received, either re-bid the contract or contact Grants Administration to determine if the provisions for non-competitive procurement found in Section 3 apply. Remember, a bid marked "No Bid" is considered a bid. For contracts that result in re-bid, publish a solicitation in a newspaper of general circulation and directly solicit bids from contractors. A shortened bid period should only be requested if there are extenuating

Do not submit proposed contracts for Grants Administration review and approval prior to obtaining bids and selection of the apparent low bidder.

CH 8: PROCUREMENT AND CONTRACTING

circumstances beyond the control of the local government. Examples include:

- The project has been bid several times, documentation exists for each bid, and other funding is in jeopardy.
 - The project must get underway or finish in order to meet the timeline of an industry which has committed to begin operations and create jobs.
 - There is a local emergency affecting health and safety which will be addressed once the project is complete.
- ◆ Review SAM website to confirm contractor is not excluded from participating in federal contracts and print out a verification sheet. If a search indicates “no records found”, this means that the contractor is not registered or may have their record set to private.
 - ◆ Prepare and mail *Notice of Intent to Award* form subject to Grants Administration’s review of the bid and contract documents to the selected or appropriate bidders. This form is available in the attachments to this chapter.

8. Errors in Bidding

- ◆ The bid document must indicate how bidding errors will be handled.
- ◆ When an error is discovered in one or more bids to be submitted, contractors must have an opportunity to correct the bids they have submitted prior to bid opening, by initialing and dating the change. If a contractor has corrected and initialed his bid prior to bid opening, the engineer’s recommendation must acknowledge that the correction occurred prior to submittal of the bid.
- ◆ Once bids are opened, the bids may not be altered. If the engineer determines there are computation or mathematical errors while he is preparing the itemized bid tabulation, the engineer may show the correction on the itemized bid tabulation. The correction must be specified as the engineer’s correction, based on computations verified for all bidders. The engineer should explain the procedure in his recommendation of award. In addition, each original bid as well as the correction must be listed on the itemized bid tabulation. All contractors must be notified and any contractor may choose to withdraw their bid if the correct computation is not acceptable. *Change

The following referenced forms are available in the attachments to this chapter:

- *Architect/Engineer’s Certification of Accessibility*
- *Notice of Intent to Award*
- *Debarment Certification Form*
- *Bidder’s Proposed Section 3 Contracts/Subcontracts*
- *Bidder’s Section 3 Estimated New Hires*
- *CDBG Section 102 Disclosure Form*

CH 8: PROCUREMENT AND CONTRACTING

orders cannot be used to correct errors in bidding documents prepared by the engineer after the bids have been opened.

Generally, discrepancies should be handled as follows:

- Discrepancies between the multiplication of units of work and unit prices should be resolved in favor of the unit prices.
 - Discrepancies between the indicated sum of any column of figures and the correct sum thereof should be resolved in favor of the corrected sum.
 - Discrepancies between words and figures should be resolved in favor of the words.
- ◆ It is not acceptable to award a bid and then submit a change order for an additional activity(ies) or to remove ineligible items from the contract. The Grantee must allow all bidders the opportunity to include any such proposed changes in their bid or the project may require re-bidding.
 - ◆ Changes in the price of an item procured through competitive sealed bidding are not allowed. If an increase in the price of materials, equipment and/or labor can be determined to be justified and reasonable, a change order request may be submitted to Grants Administration.

9. Within twenty days after the bid opening, the recipient must submit the proposed contract, a description of the method of procurement, and selection procedures and whether the grant activities will involve multiple construction contracts to Grants Administration for approval, including the following documentation:

- ◆ A copy of the solicitation of the bid which must clearly define the items or services needed in order for the bidders to properly respond to the invitation.
- ◆ Copy of the advertisement's Affidavit of Publication and bidder's list or other documentation as to how responses were solicited.
- ◆ Bidder's information which delineates the method of bidding, bid evaluation, the basis of contract award, etc.
- ◆ A certified copy of the itemized bid tabulation or proposal tabulation sheet reflecting all bids.
- ◆ Evidence that cost analysis was performed to determine the reasonableness of the price, if appropriate, and engineer's recommendation of contract award. The recommendation must include:
 - Whether the bids were considered

When bids for construction projects are significantly under budget, all cost savings must be prorated among funding sources. A budget revision to reflect the contract costs may be required with the contract.

CH 8: PROCUREMENT AND CONTRACTING

responsive.

- Identify and explain any bid discrepancies and how they were considered in accordance with the bid documents.
 - Whether any alternatives were accepted and the total recommended contract amount.
 - How cost reasonableness was determined.
 - Explanation for any delays in submitting bid documents for approval.
- ◆ A copy of the itemized bid form from the lowest bidder.
 - ◆ A copy of the completed but not executed contract.
 - ◆ Verification through www.sam.gov that the contractor is not on the Excluded Parties list.
 - ◆ Debarment Certification Form
 - ◆ Verification that the contractor is no on the State Suspensions and Debarments list accessed at <http://procurement.sc.gov/PS/legal/PS-legal-suspend-debar.phtm>
 - ◆ If the contract is over \$100,000:
 - Completed Section 3 forecasts:
 - ◇ Bidder's Proposed Section 3 Contracts/Subcontracts form
 - ◇ Bidder's Section 3 Estimated New Hires form
 - ◆ *Updated Section 102 Disclosure Report* form indicating all contractors, services and the amount of the contracts (only for HUD grants received by the unit of local government which exceeded \$200,000).
 - ◆ The *CDBG Contract Transmittal Form (C-1)* which certifies that the recipient has included all applicable provisions in the contract. The C-1 should list the CDBG line item budget relevant to the contract submitted. If the contract has multiple funding sources, the source and amount must be listed accordingly. This form must be signed and dated by an official in charge of procurement for the recipient. The form includes a certification that the grantee or project administrator has reviewed the documents and certifies they are consistent with the approved CDBG application and environmental review and are in compliance with all CDBG requirements. This form along with a *Construction Contract Review Checklist* and a copy of the *CDBG Contract Special Provisions* is included in the attachments to this chapter.
 - ◆ Documentation of BABA compliance must be provided for a minimum of 95% of all iron, steel, manufactured products, and construction materials used in the project. The Grant Recipient must provide an itemization to identify the

CH 8: PROCUREMENT AND CONTRACTING

products, quantities, and costs as support documentation (only for applicable projects).

- ◆ Contracts submitted for Grants Administration review within fifteen or fewer days before bid expiration must also submit a letter from the contractor agreeing to a thirty day extension of the bid.

10. Grants Administration will notify the recipient in writing regarding the contract. No contracts may be executed until Grants Administration has given contract approval. Failure to adhere to this policy could result in disallowed costs. Once a contract has been approved, the agreement should be executed in a timely manner.

11. Award/execute contract and secure performance and payment bonds within ten days.

- ◆ Bidder to whom award is made must submit performance and payment bonds in the amount of the contract price within the period specified in the bid documents or within ten days after contract documents have been presented to the contractor for signature.
 - Performance Bond Form from a surety company appearing on the U.S. Treasury Department's latest approved list, or Best's Key Rating Guide, which shall show a financial strength of at least five times the contract price. The performance bond must equal not less than 100% of the contract price.
 - Payment Bond Form from a surety company appearing on the U.S. Treasury Department's latest approved list, or Best's Key Rating Guide, which shall show a financial strength rating of a least five times the contract price. The payment bond must equal not less than 100% of the contract price.
- ◆ Approve contractor's bonds and execute contract within ten days of receipt.
- ◆ Issue Notice to Proceed and send copy to Grants Administration. The Notice to Proceed should not be issued until the contract has been executed.

Section 7 – Buy America Build America Act Requirements

Pursuant to the Buy America Build America Act (BABA), Grant Recipients that receive funding for infrastructure projects funded on or after FY23 must ensure that:

- ◆ all iron and steel used in the project are produced in the United States - this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

CH 8: PROCUREMENT AND CONTRACTING

- ◆ specifically listed manufactured products - this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and:
 - a. Metals other than iron or steel (non-ferrous metals),
 - b. Lumber,
 - c. Composite building materials, and
 - d. Plastic and polymer-based pipe and tube materials, including PVC pipe.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Documentation of BABA compliance must be provided for a minimum of 95% of all iron, steel, manufactured products, and construction materials used in the project. The Grant Recipient must provide an itemization to identify the products, quantities, and costs as support documentation. The bid tab is generally not sufficiently detailed to itemize each separate product or material. Until further guidance is provided, the Grant Recipient must provide written evidence from the manufacturer or supplier that:

- ◆ Identifies the item purchased;
- ◆ Affirms the location of manufacture as within the United States; and
- ◆ If signed by an authorized company representative.

In rare instances, a BABA waiver may be available. To request such a waiver, the Grant Recipient must provide a letter to GA requesting a BABA waiver, citing the relevant exception, and providing a narrative justification and any supporting documentation for how the exception applies to the project. NOTE: As GA

CH 8: PROCUREMENT AND CONTRACTING

receives further guidance from HUD about BABA, the manual will be updated accordingly.

Section 8 - Contract Requirements

All contracts are required to contain Federal and State clauses pertaining to equal opportunity, labor standards, and general terms and conditions. Grants Administration has prepared a standard set of these provisions for use in professional services or construction contracts. These provisions are in the attachments to this chapter.

The following forms are also available in the attachments to this chapter:

- ◆ *Contractor's Section 3 Business Utilization Report*
- ◆ *Contractor's Section 3 New Hires Report*

Section 9 - Change Orders

Change orders must be kept to an absolute minimum and are for unforeseen problems or issues that arise during construction. Change orders cannot be done at the time of contract award, unless all bidders have been given the opportunity to submit the same cost changes. Change orders also cannot be used to correct bidding computation errors.

The recipient must obtain written approval from Grants Administration for all change orders, including no cost change orders, prior to execution of the change order.

Documentation submitted with every change order must include:

- ◆ *Contract Change Order Transmittal Form (C-2)*, which must be signed and dated by an official in charge of procurement for the recipient (included in the attachments to this chapter),
- ◆ 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.

CH 8: PROCUREMENT AND CONTRACTING

In addition to the change order documentation, the recipient must submit an updated *Section 102 Disclosure Form* if the construction contract amount or any other pertinent information has changed.

The architect/engineer or project inspector usually prepares change orders; however, the recipient must approve and authorize change orders before they are executed. **The proposed change must also be verified and/or recommended for approval by the project engineer, project manager, architect or other technical support personnel.** The recipient 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, a new CDBG activity, or a change in location, beneficiaries or how the project will be carried out, a *Project Amendment Request form* may also be necessary. If the change involves a new activity not previously included on the original bid and will result in a significant cost change order (i.e., greater than 30% of the contract) then the new activity may have to be re-bid. Please contact Grants Administration Procurement Specialist for a determination. Factors to be considered include whether the change order will exceed the project budget, if the service area will change, if the original intent of the project will be altered, etc.

Section 10 - Bonding and Insurance

Contracts Less Than \$100,000

For all contracts of \$100,000 or less, recipients will follow local procedures relating to bonding and insurance. Also, please consult your engineer to protect the interest of the recipient.

Construction Contracts Over \$100,000

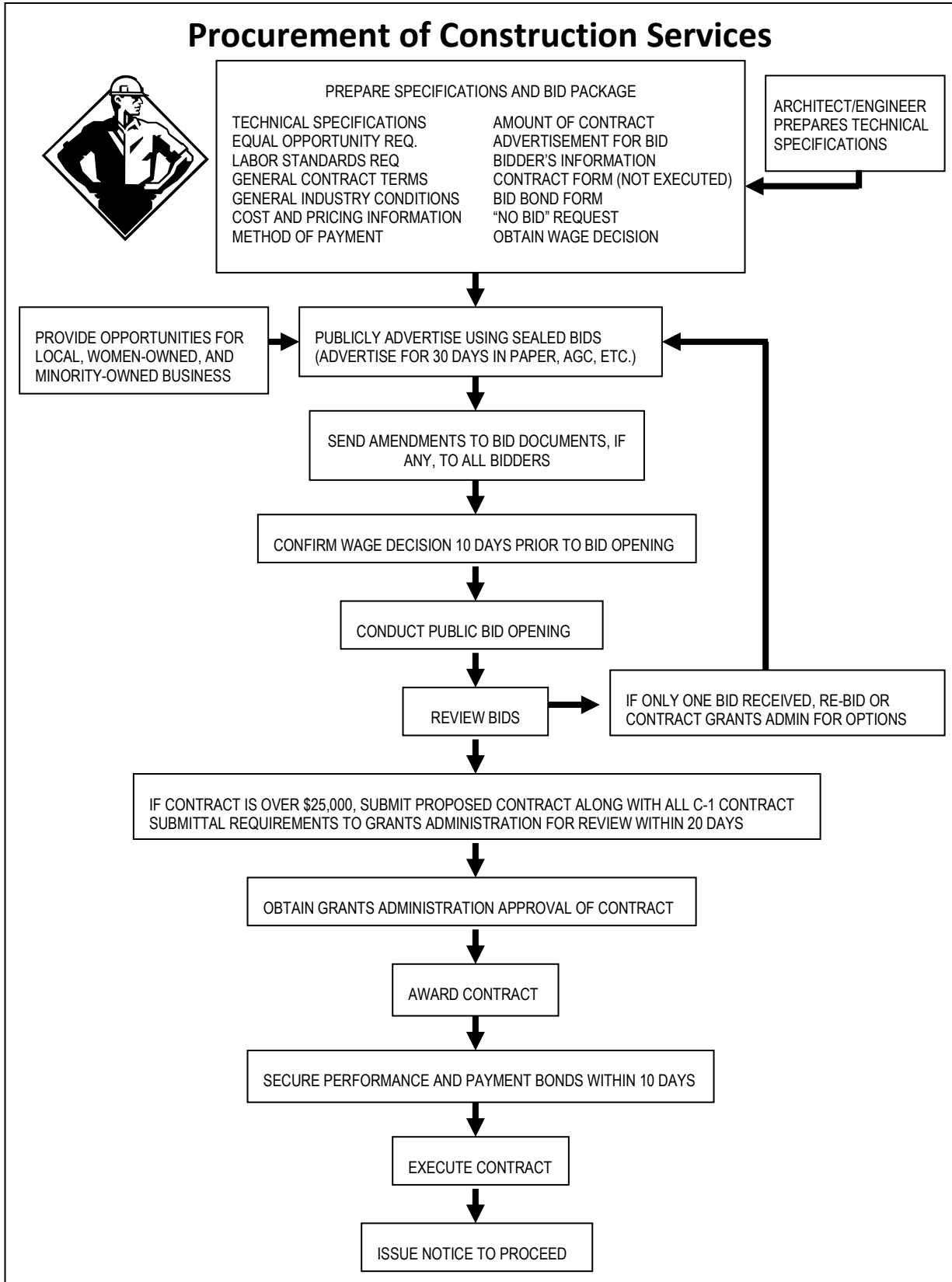
For construction contracts over \$100,000 the minimum bonding and insurance requirements are as follows:

- ◆ A bid guarantee from each bidder equal to 5% of the bid price. The bid guarantee shall consist of a bid bond, certified check, or other negotiable instrument accompanying the bid.
- ◆ A performance bond from contractors for 100% of the contract shall be executed in connection with each contract.
- ◆ A payment bond on the part of the contractor for 100% of the contract price.
- ◆ All bonds shall be obtained from companies holding certificates of authority as acceptable sureties.

CH 8: PROCUREMENT AND CONTRACTING

Grants Administration encourages recipients to require adequate liability insurance from the contractors.

CH 8: PROCUREMENT AND CONTRACTING



CH 8: PROCUREMENT AND CONTRACTING

Section 11 - Subrecipient Agreements

The recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts and for taking appropriate action when performance problems arise.

When entities outside of the recipient government receive CDBG funds to **carry out** eligible activities **on behalf of** the recipient, subrecipient agreements are needed to maintain accountability. These documents describe the terms and conditions under which CDBG funds are provided, and establish a basis for legal action if those terms and conditions are not met.

Definition of Subrecipient

A subrecipient is a public or private non-profit agency, authority or organization, or other eligible entity described in Section 105(a)(15) of Title I, that is provided CDBG funds through a subrecipient agreement to **carry out** agreed upon eligible activities.

When an entity is selected as a subrecipient, there are no regulatory requirements governing how the locality selects that entity. However, the recipient must ensure that the entity has the capacity to carry out the project. The locality may simply designate a non-profit organization or an entity described in Section 105(a)(15) of Title I to act as a subrecipient to carry out an activity. However, the recipient and the subrecipient must then enter into a written agreement that meets all applicable requirements.

There are several situations where an entity is **not** considered a subrecipient:

- ◆ The owner (either a non-profit entity, for-profit business, or an individual) of a residential unit or units may receive rehabilitation assistance.
- ◆ A non-profit organization or business may receive relocation payments and assistance when displaced.
- ◆ A for-profit business may receive a loan or grant for a special economic development project.
- ◆ There is a fourth situation where the recipient designates a public agency to assist the recipient in carrying out the project activities. This is a non-procurement action, which requires a contractual agreement to designate roles and responsibilities and costs for such services.

CH 8: PROCUREMENT AND CONTRACTING

Subrecipient Agreements

For subrecipients, compliance with applicable requirements is covered through a *Subrecipient Agreement*. The following general requirements are applicable:

- ◆ All CDBG requirements are applicable to subrecipients.
- ◆ Procurement by the subrecipient must follow the open and competitive requirements of Grants Administration's procurement code.
- ◆ Uniform administrative requirements in 2 CFR Part 200 must be met. (See Chapter 3 for more information on CDBG Financial Management.)
- ◆ Grants Administration may allow the recipient to allow the subrecipient to retain program income for use for specified eligible activities, provided a subrecipient agreement remains in effect during any period the subrecipient has control over the program income. The agreement must specify the activities that will be undertaken. Program income is subject to all CDBG requirements. (See Chapter 4 for more information on CDBG Program Income.)

Subrecipient Agreement Provisions

Before undertaking any activities or disbursing any CDBG funds to a subrecipient, the recipient shall submit a proposed subrecipient agreement for Grants Administration approval. A *Section 102 Disclosure form* showing the subrecipient is required to be submitted with the agreement if it was not shown on the *Disclosure form* in the approved application. Once Grants Administration approval is given, the recipient may execute a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income. At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

- ◆ Description of work - The agreement shall include a comprehensive description of the type of work to be performed, a schedule for completing the work, and a budget. The responsibilities of each party to the agreement must be addressed. These items shall be in sufficient detail to provide a sound basis for the recipient to effectively monitor performance under the agreement. The description does not need to refer to quantities and work specifications because if changes are required to the project, the subrecipient will have to revise the agreement.
- ◆ Drawdown of Funds - The Subrecipient will request a drawdown of needed funds by submitting a request for payment to the Grantee. The Subrecipient will make this request at least three (3) weeks in advance of need.

CH 8: PROCUREMENT AND CONTRACTING

Funds must be disbursed by the recipient in a timely manner. (See Chapter 3, Financial, for more on the timely drawdown of funds.) No more than five thousand dollars (\$5,000) in CDBG funds may be kept on hand by the subrecipient at any time.

- ◆ Unexpended Grant Funds - The Subrecipient agrees that it will return to the recipient any unexpended grant funds provided by the Grantee under this Agreement.
- ◆ Program income - The agreement shall include the disposition of any program income received as a result of the CDBG project in compliance with all CDBG requirements. (See Chapter 4 for more information.)
- ◆ Records and reports - The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.
- ◆ Uniform administrative requirements - The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, 2 CFR Part 200.
 - Financial - Guidelines for financial and compliance audits of federally assisted programs, 2 CFR Part 200.
 - Procurement - The subrecipient must comply with federal and GA procurement requirements if a contractor is hired to carry out the project including submission of the contract and procurement method for review prior to execution.
- ◆ Federal and State Laws - The subrecipient is responsible for compliance with all applicable Federal or State laws, Executive Orders, and regulations of the CDBG program.
- ◆ South Carolina Illegal Immigration Reform Act: Subrecipients are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.
- ◆ Other program requirements - The agreement shall require the subrecipient to carry out each activity in compliance with all Federal and State laws and regulations except that:
 - The subrecipient does not assume the recipient's environmental responsibilities.

CH 8: PROCUREMENT AND CONTRACTING

- The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52, Intergovernmental Coordination Regulations.
- ◆ Debarment Certification - The Subrecipient must verify that all contractors and subcontractors are not excluded from doing business with the Federal government and will provide the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions", prior to receiving Federal Funds. The Subrecipient certifies that neither the organization nor its officers are debarred, suspended, ineligible or voluntarily excluded from receiving federal funds. The Subrecipient must require that any prime contractor or lower tier contractor must also complete this debarment certification and the Subrecipient will keep it on file for review as outlined in records and reports. The Subrecipient must also check the eligibility on all contractors and subcontractors who perform work under this Agreement regardless of dollar amount. The Subrecipient must request the appropriate eligibility check through Grants Administration prior to award of any contract.
- ◆ Labor Requirements - This project is funded in part by with CDBG funds and is subject to the labor requirements as outlined in the "Subrecipient Agreement Standard Provisions", as are applicable throughout the entire project. These provisions are attached.
- ◆ Use of Real Property and Reversion of Assets - Upon expiration or termination of this Agreement the Subrecipient shall transfer on behalf of the Grantee, to Grants Administration, or Grants Administration's Assignee, any CDBG funds on hand at that time and any accounts receivable attributable to the use of CDBG funds.

Any real property acquired or improved in whole or in part with CDBG funds must continue to be used for the purpose for which it was acquired or improved. Any changes in its use within 5 years of closeout of the grant must be approved by Grants Administration in writing.

- ◆ Amendments - Any changes in the scope of the project, as outlined in this Agreement, including cost increases, must be submitted in writing by the Subrecipient to the Grantee as a request for an award adjustment. Any adjustment granted by the Grantee shall be appended to this Agreement as an amendment. Copies of any changes must be submitted to Grants Administration for programmatic purposes.
- ◆ Monitoring - All Subrecipient records with respect to any matters covered by this agreement shall be made available to the Federal, State, or Grantee officials at any time during normal business hours, as often as deemed necessary to audit, examine, and make excerpts or transcripts of all relevant

CH 8: PROCUREMENT AND CONTRACTING

data. Any deficiencies noted in reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above requirements will constitute a violation of this contract and may result in the withholding of future payments.

- ◆ Liability - The Subrecipient understands and warrants that it will defend any liability arising from this Agreement and that the grantee accepts no liability, in so far as such funds are expended in accordance with this Agreement.

The Subrecipient agrees to repay to Grants Administration funds equal to the amount of Community Development Block Grant (CDBG) funds provided to the Subrecipient by the Grantee which Grants Administration has determined that its agents or assigns have caused to have been advanced and/or expended in violation of this Agreement and/or any federal, state or local laws or policies governing the use of CDBG funds; this provision also applies to any Funds considered to be program income generated by this Agreement. Grants Administration is the sole arbiter in all matters concerning the eligibility of costs and interpretation of the provisions of law, statute, and policy as well as terms and conditions of this Subrecipient Agreement.

- ◆ Suspension and Termination - In accordance with 2 CFR Part 200 suspension or termination may occur if the Subrecipient materially fails to comply with any terms of this Agreement, and that the Agreement may be terminated for convenience in accordance with 2 CFR Part 200.
- ◆ Ethics, Accountability and Campaign Reform Act of 1991 - All provisions of this Act have been and will be complied with by the parties to this agreement in regard to actions and expenditures of funds related to the CDBG project giving rise to this agreement.
- ◆ Special Provisions - The Subrecipient Agreement Standard Provisions attached to this Agreement are considered to be an integral part of this Agreement. These provisions are subject to change from time to time as federal laws and regulations are promulgated. The Subrecipient will be notified in writing if any changes occur.

The following referenced forms can be downloaded from the Forms section of the cdbgSC.com website:

- *Sample Subrecipient Agreement*
- *CDBG Subrecipient Agreement Standard Provisions*

CH 8: PROCUREMENT AND CONTRACTING

Subrecipient Procurements and Contracting

Where a recipient (or a subrecipient) has hired a contractor under State procurement regulations to carry out an activity or service for the recipient, the recipient must ensure that CDBG requirements, where applicable, are followed.

For instance, Davis-Bacon wages would need to be paid to laborers working for a contractor building a workforce center. **Contracts which are let between subrecipients and a contractor are required to be submitted to Grants Administration for review prior to execution.**

Those contracts will be monitored for compliance with regard to the procurement guidelines as outlined in this chapter. Additionally, the regulations do not prohibit a recipient from imposing additional or stricter requirements upon a contractor or subrecipient if the recipient deems it appropriate.

Section 12 - Contractual Agreements between a Recipient and a Public Agency

Recipients are permitted under Title I to designate public agencies to assist in carrying out eligible activities on behalf of the recipient. Such designation is a non-procurement action by which the recipient may obtain services through non-competitive negotiations with another public agency (e.g., an area-wide planning agency).

Recipients must maintain the following documentation on the non-competitive procurement action:

- ◆ The rationale for the method of procurement used, i.e., the non-competitive negotiation is expected to be the most cost effective and efficient because... (give reasons).
- ◆ The reasoning behind the selection of contract type, i.e., fixed-fee or cost reimbursable, maximum amount specified.
- ◆ A cost or price analysis used to judge the suitability and reasonableness of costs to be charged.

Once the negotiations are complete, a contractual agreement must be executed. This agreement designates the scope of services, roles and responsibilities of each party, the time of performance and cost for such services. The contract must be submitted to Grants Administration for review and must also contain the *CDBG Contract Special Provisions* (found in the attachments to this chapter), the updated *Section 102 Disclosure Form* (if applicable) and the *Debarment Certification*.

CH 8: PROCUREMENT AND CONTRACTING

A summary of the direct and indirect charges to be reimbursed under the contract and the basis on which these charges are calculated must be provided to the recipient with each request for reimbursement. Time sheets documenting staff time spent on the project should also be maintained.

Section 13 - Intergovernmental and Cooperative Agreements

Intergovernmental and Cooperative Agreements can be used by local jurisdictions to assist in the development, operation, and/or management of CDBG programs and projects.

- ◆ An **Intergovernmental Agreement** typically involves two or more units of local governments who enter into an agreement to apply jointly for CDBG funding. The agreement must be approved prior to execution by Grants Administration, and at a minimum should:
 - State that the parties have agreed to cooperate in undertaking the project.
 - Delineate the responsibilities and authorities of each party with respect to the administration of the grant.
 - Authorize one of the parties to be the recipient of the funds and have primary administrative responsibility.

A sample agreement is included in the attachments to this chapter.

- ◆ A **Cooperative Agreement** is often used when a local governmental entity applies for a grant to construct public facilities or improvements and decides to have another government entity own, operate and/or maintain the improvements once they are completed. The agreement must be approved prior to execution by Grants Administration, and at a minimum should:
 - State that the parties have agreed to cooperate in undertaking the project.
 - Delineate the responsibilities and authorities of each party with respect to the administration of the grant and continuing ownership, operation and maintenance of facilities if applicable.
 - Authorize one of the parties to be the recipient of the funds and have primary administrative responsibility.

Chapter 8: Procurement and Contracting Attachments

Sample Intergovernmental Agreement
Subrecipient Agreement
Subrecipient Agreement Standard Provisions
Sample Professional Services Evaluation
Sample Review Panel Selection Summary
Sample Professional Services Contract
Sample Advertisement for Bids
CDBG Contract Special Provisions
CDBG Recommended Contract Checklist – Construction Only
Construction Contract Review Checklist
CDBG Contract Transmittal Form (C-1)
CDBG Contract Change Order Transmittal Form (C-2)
Section 3 Information Sheet for Contractors/Business Concerns
Section 3 Business Concern Self Certification Form
Section 3 Worker & Targeted Worker Self Certification Form **(Revised 3/2022)**
Section 3 Labor Hours Tracking Report **(New 3/2022)**
Notice of Intent to Award
Notice to Proceed
Design/Build Checklist
Architect/Engineer's Certification
Debarment Certification
CDBG Section 102 Disclosure Report
Sample and Instructions for Section 102 Disclosure Report