

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Community Development Block Grant (CDBG) Program



PLAYING BY THE RULES

A HANDBOOK FOR SUBRECIPIENTS
ON ADMINISTRATIVE SYSTEMS



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A Handbook for CDBG Subrecipients on Administrative Systems

U.S. Department of Housing and Urban Development
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CHAPTER 3

PROCUREMENT AND CONTRACTING

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In this chapter, you will find the requirements for purchasing materials, products, or services with CDBG funds. Regardless of whether you are a small agency purchasing office supplies or a large organization contracting for millions of dollars of construction services, the requirements for the purchasing process ensure that you:

- Follow a **free and open competitive process** in acquiring products or services.
- Properly **document** your purchasing activities and decisions.
- Observe the special **rules for specific types of purchases** (micro and small purchases, competitive sealed bids, competitive proposals, and sole source procurements).
- Properly **bond and insure** large construction contracts and/or subcontracts.
- Use **local businesses** and contract with **small, minority, and/or women-owned businesses** whenever feasible.

When spending taxpayers' money, no matter the amount, you must confirm that you are paying competitive prices and getting the best value for your community. The rules require that you pay a fair price; they do not require that you get the latest technology at the lowest possible cost, but they do require that you shop based on price and that you get what you paid for. You should use CDBG funds to buy only what is necessary under the terms of your Subrecipient Agreement. You need to: 1) ensure the integrity of your purchasing decisions; 2) document the history, results, and decisions of all your purchases; 3) follow the rules for certain kinds of transactions; and 4) offer opportunities to local and disadvantaged firms to respond to your purchasing needs. By following these requirements, you ensure that CDBG funds are not being wasted.

Observing basic rules makes purchasing decisions more efficient.

Example

Set up a standardized purchasing system for getting price quotes and preparing purchase orders.

Results

- Avoids reinventing the wheel every time you buy materials and supplies.
- Stretches limited budgets.
- Documents fair price paid for every purchase.

Whenever you use CDBG funds to purchase materials or services, you need to document that you followed the rules to get the lowest price. To avoid disallowed costs and/or repayment for ineligible expenditures, document the circumstances, need, and details of every purchasing decision, whether it involves renting an office or buying two-by-fours. Initially, this may be burdensome, but full documentation will help you avoid serious problems in the long run.

AS YOU READ THIS CHAPTER, THINK ABOUT...

1. Setting up a purchasing system designed to confirm that you are getting the best value for your money.
2. Creating or updating the list of vendors and contractors from whom you plan to purchase materials, supplies, equipment, and services over the next 12 months.
3. Developing or updating a written procurement manual describing your procedures and a code of conduct for all employees involved in purchasing.
4. Identifying ways to confirm that all purchasing documents—cost and price solicitations, purchase orders, contracts, delivery receipts, invoices, payables records, and check vouchers—are integrated into one system.
5. Ensuring the honesty and fairness of all your vendor relationships and purchasing decisions. (faster than progress is attained).



3.1 GENERAL PROCUREMENT REQUIREMENTS

The procurement standards and procedures are to certify that supplies, equipment, construction, and other services acquired in whole or in part with Federal funds are:

- Obtained as efficiently and economically as possible.
- Acquired in a manner that provides open and free competition ([2 CFR 200.319\(a\)](#)).

Your solicitations must clearly explain all requirements that the bidder/offeror must achieve for you to further consider his or her bid/offer. Requests for goods and services must contain a clear and accurate description of the material, product, or service to be purchased, eliminating any features which unduly restrict competition. Examples of restrictive competition include:

- Placing unreasonable qualifying requirements on firms.
- Requiring unnecessary experience and excessive bonding.
- Inappropriately specifying “brand name” products and not allowing “an equal or similar” product.
- Noncompetitive pricing practices between firms or affiliated companies.
- Noncompetitive awards to consultants on retainer contracts.

STATES: [24 CFR 570.489\(g\)](#) and [\(h\)](#) require that States develop policies and procedures for themselves and for their units of general local government (UGLGs) relating to procurement and conflict of interest, respectively. These State CDBG regulations give special attention to conflicts in procurement, including the acquisition and disposition of real property and the provision of assistance with CDBG funds by the UGLG or its subrecipients, to individuals, businesses and other private entities.

Make your contract award to the bidder/offeror whose bid/offer is most responsive to your solicitation when taking into account price and other factors. You may reject any or all bids with documented reasons. You must confirm that awards are made only to responsible contractors possessing the ability to perform successfully based on the terms and conditions of the proposed procurement. You must also review the contractor’s integrity, compliance with public policy, record of past performance, and financial and technical resources.

The Federal contracting guidelines ensure that contracts are structured and managed consistently with good administrative practices, using sound business judgment.

The Federal procurement requirements are at Uniform Guidance [2 CFR Part 200, Subpart D, Procurement Standards](#) and include the following:

- All procurement transactions for the acquisition of property or services must be conducted consistent with the standards in [2 CFR 200.318](#) and [2 CFR 200.319](#), and one of the procurement methods at [2 CFR 200.320](#).
- All organizations must maintain **records detailing the history of your procurement** ([2 CFR 200.318\(2\)\(ii\)](#)). These records should include your rationale for the method of procurement used, selection of contract type, contractor selection/rejection process, and the basis for the contract cost or price.
- **Pre-qualified lists of vendors/contractors**, if used, must be current, must be developed through open solicitation, must include several qualified sources, and must allow entry of other firms to qualify at any time during the solicitation period ([2 CFR 200.319\(e\)](#)).
- To eliminate an unfair competitive advantage, you must **exclude contractors that develop or draft specifications**, requirements, statements of work, invitations for bids (IFB), and/or requests for proposals from competing for such procurement ([2 CFR 200.319\(b\)](#)).
- You must certify that **awards are not made to any party which is [debarred](#) or [suspended](#) or is otherwise excluded from or ineligible for participation** in Federal assistance programs under Executive Order 12549, “Debarment and Suspension” ([24 CFR 570.609](#) and [2 CFR 200.214](#)).
 - You must check the Federal Government’s [System for Award Management \(SAM\)](#) and conduct a public search before making an award.

- You must have clear **written selection procedures for procurement transactions** ([2 CFR 200.319\(d\)](#)) and confirm that:
 - You are **avoiding the purchase of unnecessary or duplicate items**. Where appropriate, you should analyze whether a lease or a purchase is more cost-effective ([2 CFR 200.318\(d\)](#)).
 - To foster greater economy and efficiency, you should consider entering into state or local **intergovernmental agreements for procurement** for common or shared goods and services ([2 CFR 200.318\(e\)](#)) or using **Federal excess and surplus property** when feasible and reduces project costs ([2 CFR 200.318\(f\)](#)).
 - As appropriate, you should provide a **preference for the purchase or use of goods produced in the United States**, including but not limited to such items as iron, aluminum, steel, cement, glass, lumber, plastics, and other manufactured products. Language to this effect must be included in all subawards, such as contracts and purchase orders for work or products ([2 CFR 200.322](#)).
 - **Authorized official(s) of your organization have signed all purchase orders and contracts** as required by your procurement procedures.
 - **Items delivered and paid for are consistent with the purchase order** and/or contract for the goods or services.
 - **Timely payment to vendors** occurs once the order is delivered, inspected, and accepted, and the payment is authorized.
 - **A cost or price analysis** is performed for every procurement action—including contract modifications—and documented in your files. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation. You must make independent estimates before receiving bids or proposals ([2 CFR 200.324\(a\)](#)).
 - **Profit or fee is negotiated separately** from price where competition is lacking. To establish a fair and reasonable profit, consideration will be given to the following factors:
 - The complexity of the work to be performed.
 - The risk borne by the contractor.
 - The contractor's investment.
 - The amount of subcontracting.
 - The quality of past performance.
 - Industry rates for the area ([2 CFR 200.324\(b\)](#)).
 - **Contract provisions** described in [Appendix II to Part 200](#) must be included in any contracts, as applicable.
- Your organization must **not use "cost plus a percentage of cost" pricing** for contracts ([2 CFR 200.324\(d\)](#)). You may use "time and material" type contracts only after you have documented that no other contract is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk. The cost is the sum of the actual materials, direct labor hours, general administration, and profit ([2 CFR 200.318\(j\)\(1-2\)](#)).
- You must have **procedures in place** to handle and resolve protests and disputes relating to your procurement and in all instances report such disputes to the grantee ([2 CFR 200.318\(a\)](#)).
- You must have a **documented system of contract administration** for determining the adequacy of contractor performance ([2 CFR 200.318\(h\)](#)).
- Your organization must have a **written code of conduct** for all persons engaged in the award or administration of contracts. Such standards must ensure that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest ([2 CFR 200.318\(c\)\(1\)](#)).

3.2 PERMITTED APPROACHES TO PROCUREMENT

Depending on the scarcity of an item or service desired, and the size of the purchase, you may use different methods of procurement under the Federal regulations.¹

Permitted Procurement Approaches			
Method	Preferred for:	Type of Purchases	Other Requirements/Notes
Micro-purchases (2 CFR 200.320(a)(1))	When your total purchase is less than \$10,000. See 2 CFR 200.1 for the definition of micro-purchase threshold.	For supplies or services.	You must distribute purchases equitably among qualified suppliers (2 CFR 200.320(a)(1)).
Small purchases (2 CFR 200.320(a)(2))	Simple and informal purchasing decisions.	Buying services, supplies, or other property that does not exceed the simplified acquisition threshold ² amount (currently \$250,000)	You must receive price quotes from several qualified sources Your procurement of more than \$250,000 over the simplified acquisition threshold may not be broken up into smaller parts solely to qualify for this less complicated process under the "small purchases" approach.
Competitive sealed bids (formal advertisement, 2 CFR 200.320(b)(1))	Firm, fixed-price contract (lump sum or unit price) where the selection is based on price (2 CFR 200.320(b)(1))	Preferred for but not limited to construction services.	Two or more responsible bidders are willing and able to compete (2 CFR 200.320(b)(1)(i)(B)). You must solicit bids from an adequate number of sources and provide sufficient response time. Local and tribal governments must publicly advertise invitations for bids. (2 CFR 200.320(b)(1)(ii)(A)). Your IFB must include complete, accurate, and realistic specifications and clear definitions of items or services needed that are sufficiently detailed for bidders to properly respond, plus any pertinent attachments (2 CFR 200.320(b)(1)(ii)(B)). Bids must be opened publicly at the time and place stated in your IFB (2 CFR 200.320(b)(1)(ii)(C)). If awarded, the contract must be given to the lowest responsive and responsible bidder (you can decide to reject all bids, documenting the reason, along with the reason for rejecting any bids [2 CFR 200.320(b)(1)(ii)(D) and (E)], and retain this documentation in the file.)

¹ Subrecipients need to be aware, however, that local or state laws or policies may require additional procedures or set lower dollar-value thresholds for some forms of procurement. Therefore, it is important to check with your grantee to learn whether any such additional procurement provisions apply.

² Simplified Threshold is set by the Federal Acquisition Regulation at [48 CFR Subpart 2.1 \(definitions\)](#) and in accordance with 41 U.S.C. 1908 and is periodically adjusted for inflation. See [OMB Memorandum 18-18](#).

Permitted Procurement Approaches			
Method	Preferred for:	Type of Purchases	Other Requirements/Notes
Noncompetitive proposals/ sole source (2 CFR 200.320(c))	Single source. Public emergency or condition.		<p>Noncompetitive negotiations may be used only under very limited circumstances when another procurement method is not feasible because:</p> <ul style="list-style-type: none"> • The item or service is only available from a single source. (2 CFR 200.320(c)(2)). • There is a public emergency or condition requiring urgency that cannot be delayed (2 CFR 200.320(c)(3)). • The Federal awarding agency or pass-through entity has authorized noncompetitive proposals upon your written request (2 CFR 200.320(c)(4)). • After solicitation from several sources, competition is determined inadequate. (2 CFR 200.320(c)(5)). <p>For the acquisition of property or services, the aggregate dollar amount cannot exceed the micro-purchase threshold.</p>

Among the procurement approaches previously described, the *competitive sealed bid* resulting in a firm, fixed-price contract is the preferred procurement approach for construction when:

- There are two or more responsible and qualified providers ([2 CFR 200.320\(b\)\(1\)\(i\)\(B\)](#)).
- The requirements and specifications are thoroughly detailed ([2 CFR 200.320\(b\)\(1\)\(i\)\(A\)](#)).
- The selection of the successful bidder can be made principally based on price ([2 CFR 200.320\(b\)\(1\)\(i\)\(c\)](#)).

For complicated rehabilitation projects or unique human service activities, other forms of competitive and non-competitive procurement may be necessary or desirable. When the price is not the single most important objective, it is still important to assure the highest quality of purchase at the lowest reasonable price through “open and free competition.”

3.3 BONDING REQUIREMENTS

The requirements for bonding in procurement are as follows:

- **For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold**, you must ensure that the Federal interest is adequately protected. You may accomplish this by meeting the following *minimum Federal requirements* (see [2 CFR 200.326](#)),⁴ for bid guarantees, performance bonds, and payment bonds.
 - **A bid guarantee from each bidder equal to 5 percent of the bid price** must be a firm commitment in the form of a bid bond, certified check, or other negotiable instrument provided at the time of the bid as assurance that the bidder is prepared to execute a contract within the time specified for the bid amount ([2 CFR 200.326\(a\)](#)).
 - **A performance bond from the (sub)contractor must be for 100 percent of the contract price** to secure the contractor’s fulfillment of all obligations under the contract ([2 CFR 200.326\(b\)](#)).
 - **A payment bond from the (sub)contractor must be 100 percent of the contract price** to assure payment of all persons supplying labor and material under the contract ([2 CFR 200.326\(c\)](#)).

⁴ For the current Simplified Acquisition Threshold, see [OMB Memorandum 18-18](#).

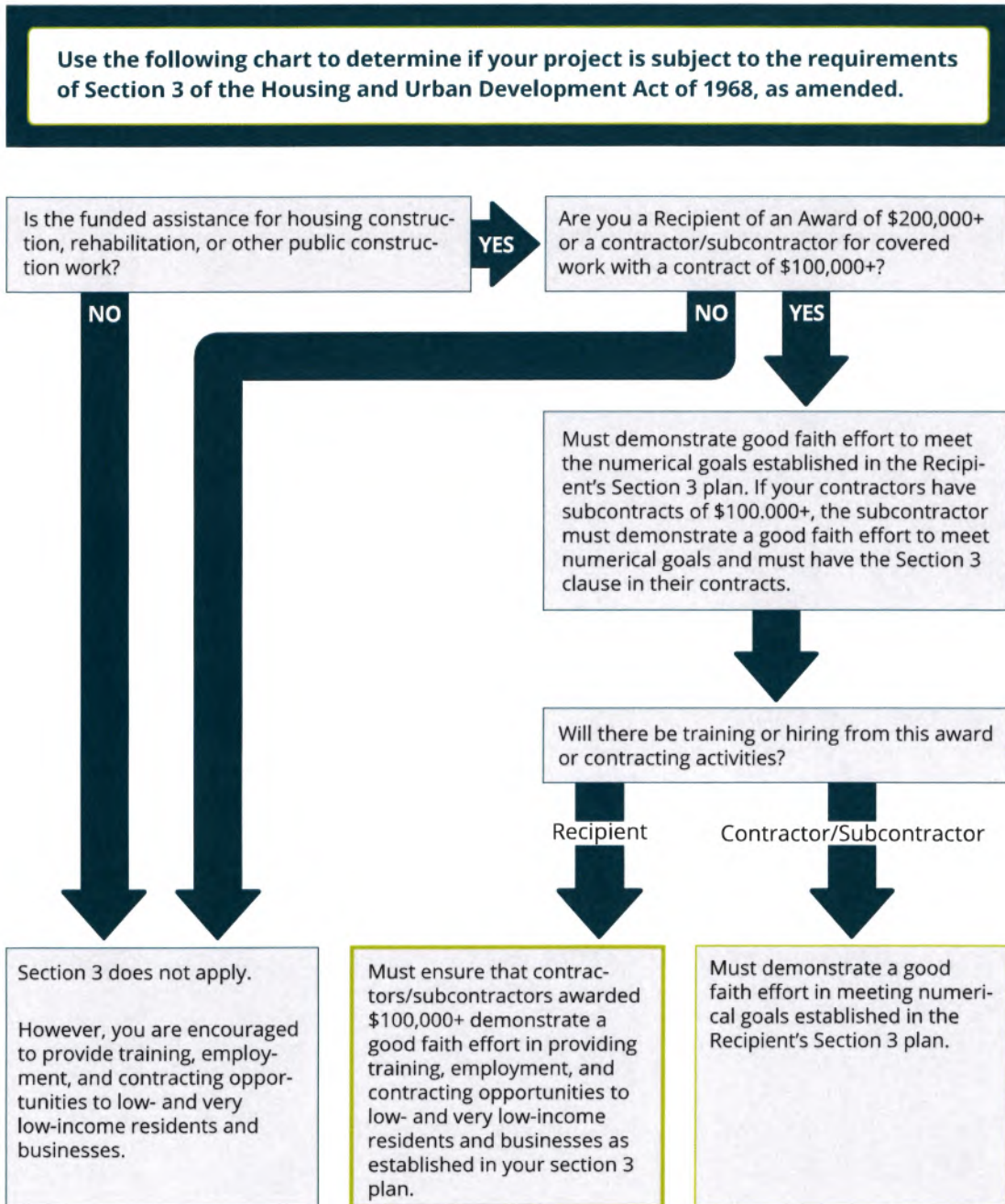
3.4 USE OF LOCAL BUSINESSES, CONTRACTING WITH SMALL, MINORITY, AND/OR WOMEN-OWNED BUSINESSES

Federal regulations, both CDBG and non-CDBG, require that you make every effort to use local business firms and contract with small, minority-owned, and/or women-owned businesses in the procurement process. Specifically,

- You must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms in your CDBG-financed activities ([2 CFR 200.321](#)). Affirmative efforts you should make include:
 - Placing these businesses on **solicitation lists** as potential sources ([2 CFR 200.321\(b\)\(1\)](#)).
 - Ensuring that **such businesses are solicited** as potential sources ([2 CFR 200.321\(b\)\(2\)](#)).
 - **Dividing total requirements and/or delivery schedules** into smaller tasks, when economically feasible, to permit maximum participation of such businesses ([2 CFR 200.321\(b\)\(3\) and \(4\)](#)).
 - Requiring prime contractors, when **subcontracts** are let, to take affirmative steps to contract with these firms ([2 CFR 200.321\(b\)\(6\)](#)).
- **Section 3** of the Housing and Community Development Act of 1968, requires that sub-recipients make reasonable efforts to award contracts for construction-related work to be performed by eligible business concerns located in or owned by residents of the target area. The purpose of Section 3 is to ensure that low- and very low-income persons, especially recipients of housing assistance, receive maximum benefit from the employment and other economic opportunities generated by CDBG-assisted activities (see [24 CFR 570.607\(b\)](#)).

You should note, however, that the desire to award contracts to local firms is not a legitimate excuse for avoiding an open and competitive procurement process.

Exhibit 3-1: Section 3 Flow Chart



Section 3 requirements apply to the entire project or activity funded with Section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered assistance.

EXERCISE FOR CHAPTER 3—PROCUREMENT AND CONTRACTING QUESTIONS

Circle the correct answer.

1. The reason for Federal competitive procurement requirements is:
 - a. To ensure that supplies, equipment, and services are acquired efficiently.
 - b. To help guarantee a “fair” price for items or services bought with Federal funds.
 - c. To give the public confidence in the procurement practices of Federal assistance programs.
 - d. To allow more firms, particularly local firms, small businesses, and minority- or women-owned businesses, to have an opportunity to compete for work under Federal programs.
 - e. All of the above.

2. A cost or price analysis and documentation of the procurement process is only required for major purchases.

TRUE FALSE

3. A governmental subrecipient is justified in breaking up a procurement into components of \$150,000 or less to utilize the “small purchase” procedures if the procurement process for each purchase is still competitive.

TRUE FALSE

4. The “Section 3” requirements for awarding work to local business concerns take precedence over the competitive procurement requirements.

TRUE FALSE

The answers are on the next page.

EXERCISE FOR CHAPTER 3—PROCUREMENT AND CONTRACTING ANSWERS

1. **(e) All of the above.**
2. **FALSE.** A subrecipient must do a cost or price analysis and maintain documentation of the procurement process for every procurement. However, the level of complexity of the analysis and detail of the documentation should vary by the size of the procurement and the extent of competitiveness in the process. Therefore, the purchase of desktop stationery supplies will require that the subrecipient maintain a very modest level of documentation of how comparative prices were analyzed (such as through catalogs and/or price quotes). A sole-source procurement, on the other hand, will require much more extensive documentation to justify the noncompetitive process and to demonstrate that the price incurred was fair.
3. **FALSE.** The standard for “small purchases” is that the procurement for services, supplies, or property does not exceed \$250,000 in the aggregate. For example, it is not allowable to break up arbitrarily a \$300,000 procurement of weatherization materials into \$100,000 purchases just to be able to use the less complicated “small purchase” procedures, since the larger purchase volume entailed in a larger purchase may be likely to result in lower per-unit prices. The purchase of such materials should be handled through a sealed bid method of procurement.
4. **FALSE.** Both sets of requirements must be satisfied. Therefore, the competitive procurement procedures adopted by the subrecipient must also be designed to facilitate and encourage local businesses to compete for the proposed work.