

Subrecipient Procurement Training

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Introductions

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Agenda

- Introduction
- Goals and Roles
- Key Principles of Procurement
- Procurement Process
- Cost Reasonableness
- Awarding a Contract
- Questions
- Resources



Goals

- Overview of the federal procurement regulations
- Understand how to conduct procurement in accordance with HCD's requirements to follow federal requirements in 2 CFR Part 200
- Tools and resources for subrecipients
- Questions and Answers



Overview

- HUD procurement regulations 2 CFR 200.319-326 outline the federal procurement requirements
- Through the Standard Agreement subrecipients are required to adhere to them for all CDBG-DR or CDBG-MIT procurements
- HUD and HCD will monitor procurements to these standards through out the lifecycle of the grant

Key Principles of Successful and Compliant Procurements





Comply with Procurement Requirements

What does this mean?

- Subrecipients will follow the federal procurement requirements, which may not be the same as the existing local or state procurement codes
 - HCD demonstrates compliance by following State procurement requirements per 2 CFR 200.317
 - HCD requires subrecipients to apply requirements in 2 CFR 200.318-326
- HCD and its subrecipients must follow federal procurement requirements even in the most urgent of disaster recovery situations.



Full and Open Competition

- Provide an opportunity for all eligible and interested businesses to respond to the procurement
 - The request for submissions is made public and advertised
 - Equal information is made available to all interested bidders
- Ensure there are no actions tied to the procurement that would limit competition



Practices that Restrict Full and Open Competition

- Placing unreasonable requirements on firms
- Requiring unnecessary experience and excessive bonding
- Non-competitive contract to consultants that are on retainer contracts
- Organizational conflicts of interest
- Specifying a “brand name” product
- Any arbitrary action in the procurement process
- Geographical preference in the solicitation



Costs are Reasonable

- Good value and good use of taxpayer funds
 - A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.
- The price paid is fair and competitive
 - A reasonable price is reflective of the market price, without special considerations, surge pricing, or other premiums.
- Costs must be determined to be reasonable, regardless of the type or method of procurement, no matter how small the purchase
 - The level of analysis to determine reasonableness will vary based on the type of procurement.



Documentation and Recordkeeping

- Records should document and verify decisions in the procurement process by detailing the significant history of a procurement.
- Includes relevant decisions at each stage of a procurement:
 - Type of Procurement
 - Advertisement
 - Independent Cost Estimate
 - Type of Contract
 - Scoring, including adherence to solicitation
 - Justification for lack of competition when competitive bids or offers are not obtained
 - Basis for contractor selection/rejection
 - Cost Reasonableness Analysis and basis of award/contract amount

Procurement Process





The Procurement Process





Before Starting the Procurement Process

- Know your own purchasing requirements and how they compare to 2 CFR 200.319-326
 - Local procurement policy should be adapted for procurement with CDBG-DR or CDBG-MIT funds
- Guiding Principles:
 - Must follow the stricter standard between local procurement policies and the federal requirements
 - Be consistent
 - Ensure fair and open competition
 - Include standards of conduct for employees
 - Prohibit conflicts of interest
 - Understand any additional requirements established through the CDBG-DR or CDBG-MIT appropriations act of accompanying Federal Register Notice.



Evaluate and Enhance Internal Controls

Internal controls strengthen procurement practices and reduce risk

- Policies and Procedures
- Plan to conduct oversight
- Maintain separation of duties
 - Designate staff who can only receive goods or make payment, not both
 - Implement a dual signature review to authorize payments
 - Ensure that only authorized individual make binding contracts
- Ensure personnel involved in procurement have appropriate training and experience
- Maintain good record keeping
- Uphold ethics and prevent conflicts of interest
- Strong internal controls are designed to prevent and deter fraud, waste, and abuse.



Tips for Effective Procurement Policy

- Identify and clearly specify standards for the goods or services
- Seek competitive offers to obtain the best possible quality at the best possible price
- Written agreements clearly state the responsibilities of each party
- Ensure the fair and equitable treatment of all bidders and potential bidders
- Keep good records
- Ensure a quality assurance system is in place
- Failure to update policies and procedures to correspond with 2 CFR 200.318-326 will likely result in ineligible expenses



Procurement Set Up

Define the scope of work

Identify the procurement type

Establish cost estimate

Release solicitation



Scope of Work

- Every procurement action must include a detailed scope of work or services
- The scope of work or services must be clear, concise, and specific to allow a respondent to satisfy the scope of work or service required
- Perform an independent price or cost analysis
- The scope of work must be a part of the scoring criteria, if the procurement is a sealed bid or competitive proposal
- Scope of work and costs should be directly connected



Scope of Work Specifications

- A subrecipient may not require bidders to have experience working within the subrecipient's county.
 - Imposing geographical preferences in the evaluation of bids or proposals directly violates the full and open competitive process requirement, per 2 CFR 200.319



Which procurement type fits the scope of work?

- Micro Purchase
- Small Purchase
- Formal Sealed Bids
 - Request for Bids, Invitation for Bids
- Competitive Proposals
 - Requests for Proposals (RFP), Request for Qualifications (RFQ), and Prequalified Lists (PQL)
- Non-competitive proposals, including emergency purchases



Procurement Cheat Sheet

- The specific type of procurement to use is determined by the facts and circumstances of the item or service that is required

Cost Methodology Reasonableness	Contract Type	Solicitation Method	Items for Procurement	Dollar Thresholds, if applicable
How do you determine the cost is reasonable for this item or service?	What types of contracts are acceptable with this item or service?	How are quotes for items or services received?	What types of items and services can be procured with this method?	What dollar value of the item or service is appropriate for this procurement method?



Micro Purchases

- Micro purchase is the acquisition of supplies or services which does not exceed the Micro Purchase Threshold of \$10,000 or less, \$2,000 for construction subject to Davis-Bacon Act
- Solicitations are not required for Micro Purchases
- Document pricing or costs that are publicly available (i.e. vendor website or publication) or from previous purchases
- Cost Reasonableness Analysis – purchase at the market price is reasonable for a micro purchase

Cost Methodology Reasonableness	Contract Type	Solicitation Method	Items for Procurement	Dollar Thresholds (if applicable)
<ul style="list-style-type: none"> • Price Analysis 	<ul style="list-style-type: none"> • Fixed Quantity • Fixed Price 	<ul style="list-style-type: none"> • No solicitation required 	<ul style="list-style-type: none"> • Repairs/ Construction • Services • Supplies • Materials 	<ul style="list-style-type: none"> • Under \$2,000 for construction • Under \$10,000 for all other purchases



Small Purchases

- Small purchases are relatively simple and informal procurements that do not exceed the Simplified Acquisition Threshold of \$250,000
- If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources
 - Three (3) qualified sources is generally adequate
- Some small and micro purchases may be conducted with petty cash, at subrecipient discretion

Cost Methodology Reasonableness	Contract Type	Solicitation Method	Items for Procurement	Dollar Threshold
<ul style="list-style-type: none"> • Price Analysis 	<ul style="list-style-type: none"> • Fixed Quantity • Fixed Price 	<ul style="list-style-type: none"> • Quotes • Submitted Bids 	<ul style="list-style-type: none"> • Supplies • Materials • Services • Construction 	<ul style="list-style-type: none"> • Over Micro Purchase limit • \$250,000 or less



Formal Sealed Bids

- Invitation for Bid (IFB), Request for Bid (RFB) is used when cost estimate is more than the \$250,000 small purchase threshold
- Publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the lowest responsive and responsible bidder

Cost Methodology Reasonableness	Contract Type	Solicitation Method	Items for Procurement	Dollar Threshold (if applicable)
<ul style="list-style-type: none">• Cost Analysis• Price Analysis	<ul style="list-style-type: none">• Fixed Price	<ul style="list-style-type: none">• Submitted Bids	<ul style="list-style-type: none">• Construction Services• Materials• Supplies	<ul style="list-style-type: none">• Over \$250,000



Formal Sealed Bids

- The solicitation must have an adequate number of respondents (3 or more is preferred)
- The solicitation may include a pre-bid conference, at the discretion of the entity
- Bids must be opened publicly at the date and time indicated on the solicitation
- Bidders must:
 - Comply with all requests listed in the procurement
 - Comply with all cross-cutting requirements listed in the procurement
 - For contracts exceeding the \$250,000 threshold, contractors must provide a bid guarantee for 5% of the contract price by an acceptable surety company
 - Comply with all HUD contract provisions



Competitive Proposals (RFP/RFQ)

- Typically used to contract for professional services, consulting, architectural, or engineering services
- Allows for the consideration of technical factors other than price; negotiation of other contract terms and conditions; revision of proposals before the final contractor selection

Cost Methodology Reasonableness	Contract Type	Solicitation Method	Items for Procurement	Dollar Threshold (if applicable)
<ul style="list-style-type: none">• Price Analysis• Cost Analysis	<ul style="list-style-type: none">• Fixed Price• Cost Re-imbusement	Submitted Proposals	<ul style="list-style-type: none">• Professional Services• Multi-Task Services• Specialty Items	<ul style="list-style-type: none">• Services over \$250,000



Competitive Proposal Requirements

- Used when price is not the determining factor in a procurement
 - However, price is still an important factor in determining the qualification of a respondent
- The RFP/RFQ must identify the criteria by which the solicitation is evaluated and eventually selected
- Include all HUD contract provisions
- Evaluated by a committee in accordance with the specifications stated in the RFP/RFQ
 - Committee should be made up of at least 3 members who independently evaluate the proposals



RFQ and Pre Qualified Lists

- Two step process that provides flexibility to grantee and can streamline process
- Pre-qualified lists of vendors/contractors is developed through a request for qualification when a general need has been identified, but the specific scope has not yet been determined.
- Most often used for professional services such as legal, audit, and environmental, when the grantee knows some of the general parameters of the scope.
- When used, the list must be developed through open solicitation, include adequate numbers of qualified sources, and must allow entry of other firms to qualify at any time during the solicitation period. It must also be current.
 - Rates can be collected with the qualifications to support future cost reasonableness determinations
- Once a specific scope is defined, quotations or bids are requested from the pre-qualified list.
- Keep lists current!



Non-Competitive Proposals

- Non-competitive proposals are used when:
 - The item or service is only available from a single source (i.e. sole source), based on a good faith review of available sources
 - Competition was determined to be inadequate after receiving proposals from numerous sources
 - A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement

Cost Methodology Reasonableness	Contract Type	Solicitation Method	Applications	Dollar Threshold (if applicable)
<ul style="list-style-type: none"> • Cost Analysis 	<ul style="list-style-type: none"> • Fixed Price • Cost Re-imbursment 	<ul style="list-style-type: none"> • Submitted Proposals 	<ul style="list-style-type: none"> • Materials • Single-task Services • Professional Services • Specialty Items 	<ul style="list-style-type: none"> • No particular threshold



Non-Competitive Procurements

- Infrequent type of procurement, when other methods are infeasible
- Sole source/Single source
 - Item is believed to be only provided by one vendor (i.e. Microsoft Office Suite)
 - Justify noncompetitive process
 - Demonstrate price incurred was reasonable (cost analysis)
- There is a solicitation and only one responsive and responsible respondent
 - Documentation of solicitation efforts
 - Document that solicitation response received is sufficient
 - Demonstrate proposed cost or price is fair (cost analysis)



Existing Contracts

- Contracts awarded for other funding sources **cannot** automatically work on CDBG-DR or CDBG-MIT funded projects
- **Method of procurement**
 - Any contract that will be considered for work on CDBG-DR projects must have been procured according to 2 CFR 200 (or stricter) requirements
 - Bid and selection process was documented, and solicitation response received was sufficient
 - Demonstrate price incurred was reasonable (cost analysis)
- **Contract must cover requirements of CDBG-DR projects**
 - Cannot add to the scope if substantially different from original
 - **HUD and program terms must be included in the contract**
 - Type of contract/fee structure must be allowable

Cost Reasonableness





Cost Reasonableness

When costs are **Reasonable, Allowable, Documented** and **Allocable**, then they are **Reimbursable**.

- 2 CFR 200.403 Factors affecting allowability of costs.
 - Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards: (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- 2 CFR 200.404 Reasonable costs.
 - A cost is reasonable if, in its nature and amount, it **does not exceed** that which would be incurred by a **prudent person** under the **circumstances** prevailing **at the time** the decision was made to incur the cost.



All Costs must be determined Necessary and Reasonable

All purchase
and
procurements

Pre-
solicitation
estimate

Analysis of
cost or price
proposed

Micro and small
purchases

Cost estimate

Review for
reasonableness

All other
types

Independent
cost estimate
(ICE)

Price or cost
analysis



Cost Reasonableness

Pre-Solicitation

- Goods/services identified, and scope developed
- Cost estimate is developed, consistent with scope
- Quotations requested from potential suppliers

Pre-Award

- Quotations reviewed
- Most responsive and responsible quote is identified
- Submission compared to estimate to determine reasonableness of submission
- Negotiation, if needed

Purchase Order or Contract

- Documentation of RADAR test
 - (R) easonable
 - (A) llowable
 - (D) ocumented
 - (A) llocable, then
 - (R) eimbursable by the Federal Award



Cost Reasonableness

- 2 CFR 200.323 provides the Federal guidelines for independent cost estimates (ICE) and cost reasonable analysis:

*The non-Federal entity must perform a cost or price analysis in connection with every procurement action **in excess of the Simplified Acquisition Threshold** including contract modifications.*

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.



When and why should I perform a Cost Analysis?

- The level of analysis is context specific, but as a starting point, subrecipients must make independent estimates **BEFORE** receiving proposals
- Estimating costs before publishing a bid or RFP:
 - provides a point of reference for review when bids are received,
 - Assists with ensuring the services are allowable, necessary, reasonable and related (allocable) to completing the project



Determining Cost Reasonableness

To determine cost reasonableness, a two-step process must be undertaken during the procurement:

- **Step 1 - Independent Cost Estimate (ICE) or Cost Estimate:** Prior to the receipt of bids or proposals, complete an ICE as part of the pre-solicitation process. This serves as the estimate for the work to be completed.
- **Step 2 - Cost or Price Analysis:** Prior to the award of a contract, an analysis must be completed to determine if the price or cost proposed is reasonable. This is usually determined by a comparison of the ICE and the price proposals or bids received.



Step 1: ICE

The ICE should include the following items:

- Method of procurement
- Type of item/services being procured (good, service, construction, A/E services)
- Description of the item or service being procured
- Provide documentation of the tool used to provide the estimate
 - Construction estimating software
 - Published pricing or quotes
 - Other methods



Step 1: ICE Methodology

- The ICE methodology must match the way that cost or price is requested in the solicitation.
- This allows for an “apples to apples” comparison when determining cost reasonableness.
- *Example:*
 - If a unit costs are requested in the solicitation, then the ICE should be completed with unit costs
 - If a lump sum cost is requested in the solicitation, then the ICE should be completed with a lump sum methodology



Step 2: Cost Analysis vs. Price Analysis

Factor	Cost Analysis	Price Analysis
Type of Procurement	<ul style="list-style-type: none"> • RFQ/RFP • Sole Source/Noncompetitive • All \$ Change Orders • Small Purchase 	<ul style="list-style-type: none"> • Sealed Bid • Micro Purchase • Small Purchase
Items Being Procured	<ul style="list-style-type: none"> • Professional Services • A/E • Labor and Materials 	<ul style="list-style-type: none"> • Supplies • Equipment • Construction
Basis for Estimate	<ul style="list-style-type: none"> • Previous proposals • Previous purchases • Estimating software • Federal rates 	<ul style="list-style-type: none"> • Published prices for commercial products/services • Price set by law/regulation • Previous proposals and purchases • Federal rates
Approach	<ul style="list-style-type: none"> • Individual line items of a proposal or bid is reviewed and compared to the estimate, the market rate, and other quotes provided 	<ul style="list-style-type: none"> • Overall or total price of the quote is reviewed and compared to the estimate, the market rate, and other quotes provided



Step 2: Completing Cost or Price Analysis

- Cost analysis shall be performed by the Procurement/Contracting staff and shall focus on the individual cost elements of the particular project.
- Once a bidder has been selected, perform due diligence prior to award.



Completing Analysis

- Typically, costs received which are within 15% of the estimate are considered cost reasonable and may move forward to award.
- What steps should be taken if costs received are not within the reasonable range?
 - **Review the estimate!** Ensure all costs which were received were accounted for in the ICE.
 - Identify costs or price areas where there are discrepancies.
 - Determine if the market conditions drastically changed from the time the ICE was completed to the time bids were received.

Awarding a Contract





Contracting Process





Review of Bids

- Sealed Bids are opened publicly once the bid period has closed
 - Bidder names and prices are read out and recorded
- Bids are evaluated by a committee to ensure all requirements were met
 - Scope of work
 - Cost reasonableness
 - Required documentation



RFP Selection

- Must select the most advantageous proposal for the needs of the project.
 - When considering both cost and other scoring criteria, grantees may select a proposer that is not the lowest in cost.
 - If the lowest cost proposal is not selected, the evaluation committee should provide a reason for the procurement file
- After review, the evaluation committee presents their recommendation to the Procurement/Contracting Director for confirmation and approval to enter in to contract for the procured item



Responsible and Responsive Bidders

- **“Responsibility”** refers to the character or quality of the bidder, with consideration being given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources
- **“Responsiveness”** refers to the bidder’s compliance with all required specifications in the formal solicitation, inclusive of any addenda. Any bidders listed on the SAM.gov Excluded Party List will be deemed non-responsive and automatically excluded from consideration for award for any public assistance programs or activities



Contractor Verification

- All contracts must be awarded to qualified, responsible contractors
- How to verify contractor and vendor eligibility to participate:
 - Visit the government website System for Award Management at **www.sam.gov**.
 - Confirm the contractor holds the proper licensure and insurance.
- Contracts must contain language ensuring the general contractor is responsible for checking debarment of their subcontractors. A list of subcontractors must be included in the procurement file.



Bonding and Insurance (2CFR 200.325)

- Performance and payment bonds for 100% of the contract price
- Bonds are typically for public works or construction projects and may not be required for goods or non-professional services
- The contract must include the requirement for maintaining the insurance certificates in the amount required in the bid documents
- The required insurance certificates are a part of the procurement file



Contracting Process

- Contracts may be fixed price contracts or time and materials contracts
- If a time and materials contract is used there must be a “not to exceed” ceiling on the contract price
 - It **must** be determined that no other contract is appropriate for services being procured
- All contracts for discrete services or deliverables should:
 - Clearly state the period of performance or date of completion
 - Incorporate performance requirements and liquidated damages or penalties
- The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.



Contract Requirements

- All contracts utilizing HUD funds must contain the contract provisions outlined in [2 CFR 200 Appendix II Contract Provisions](#) for non-federal entity contracts for federal awards.
- Contracts must contain performance penalties



Change Orders and Addendums

Change orders or addendums to contracts must also follow a procurement process:

- Prior to agreeing to a change order or amendment, the contractor must provide the scope change in writing
- An ICE is complete on the detailed scope of work before any costs are provided by the contractor
- The contractor quotes the scope change and a cost reasonableness analysis is performed, similar to the procurement process outlined earlier
- If the scope change is necessary, eligible for funding, well documented, and cost reasonable, the change order or addendum may be approved

The Procurement File





Required Documentation

- 2 CFR 200.318 (i) Subrecipients must maintain record sufficient to detail the history of the procurement. Including but not limited to:
 - Rationale for procurement type
 - Selection of contract type
 - Contractor selection/rejections
 - Basis for contract price
- Failure to maintain proper documentation may result in disallowed costs.



Procurement File

- Procurement Checklist
- Bid packet/solicitation
- Submitted bids/bid rejections
- Bid advertisements
- Bid tabulations/score sheets
- Documentation of bid opening meeting
- Debarment Check
- Documentation of Affirmative Action Steps Taken
- Cost/Price Analysis
- HCD approval of selected contractor/winning bid
- Executed contracts
- Conflict of interest disclosures (if applicable)



Tips to Successful Procurement

- Develop and follow policies and procedures that incorporate 2 CFR Part 200 requirements.
- Ensure procurements provide full and open competition in accordance with 2 CFR Part 200.319, specifically:
 - Prohibition of geographical preferences
 - Keeping prequalified lists current
 - Identifying all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals
- Ensure that cost or price analyses are performed and documented (applies to amendments/change orders)



Tips to Successful Procurement continued

- Ensure contracts include all applicable contract provisions
- 2 CFR 200.321 (b) Ensure steps are taken to contract with small, minority , and women-owned businesses.
- Perform and document debarment check
- Select the appropriate procurement method
- Maintain sufficient records

Questions





Resources

- 2 CFR 200 Subpart D (300-345):
<https://www.govinfo.gov/content/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200-subpartD.pdf>
- [HUD Buying Right CDBG-DR and Procurement Guidance](#)