Appendix A: ESG Procurement Methods

Subrecipients must select from one of six methods of procurement based on the type of products and/or services being procured and their cost. Subrecipients must ensure that they are following the stricter of the federal, state or local requirement. Many subrecipients will be required to utilize a lower threshold for procurement types than the federal requirements at 2 CFR 200.318.

2 CFR 200.318
California Uniform Public Construction Cost Accounting Act (CUPCCAA)

Micro Purchase Procedures

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

2 CFR 200.320(a)(1)
48 CFR 2.101 "Micro purchase threshold"

Small Purchase Procedures

Small purchase procedures entail a relatively simple and informal process that can be used when the cost of **supplies** or **services**, in the aggregate, do not exceed the current simplified acquisition threshold, currently defined as $250,000. Under this process, the subrecipient must:

2 CFR 200.320(a)(2)
48 CFR 2.101 "Simplified acquisition threshold"

- Obtain price or rate quotations either by phone or in writing from an adequate number of qualified sources (at least two sources).
- For construction projects and services, complete an Independent Cost Estimate/Cost Analysis.
- Maintain documentation regarding the businesses contacted and the prices quoted.
- Make the award to the lowest, responsive, and responsible source.

If applicable, prepare and sign a contract formalizing the scope of work and the terms of compensation.

- Maintain need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE firms when possible.

Competitive Sealed Bid

The Competitive Sealed Bid method is the required method for procuring ESG-funded construction work with a total cost of $250,000 or more.

2 CFR 200.320(b)(1)

The following requirements apply to the competitive sealed bid procurement process:

- Competitive sealed bids are initiated by publishing an *Invitation for Bid* (IFB).
- The IFB must be advertised in the newspaper of daily general circulation at least one time not less than fourteen days before the date set for the opening of bids. Subrecipients may also be required to publish in non-English newspapers based on their Language Access Plan.
- The IFB should be distributed to all relevant trade publications (construction services).
- The IFB must be advertised in as wide a geographic area as is necessary to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers are trade publications beyond the immediate locality of the work to be completed. The subrecipient may also be required to publish in non-English newspapers based on their Language Access Plan.
- The IFB must also be distributed to MBE/WBE businesses listed on the Supplier Clearinghouse providing related services.
- The IFB must include specifications that define the services or items required in order for the bidder to properly respond.

- 2 CFR Part 200.326 requires a bid guarantee from each bidder equal to at a minimum of (5%) of the bid price. California law requires a bid guarantee of no less than 10%. This guarantee serves as an assurance that the chosen contractor will execute the contract within the time specified.

Cal. Public Contract Code § 20483

- Bid guarantees can be in the form of a Bond or Cashier's check that are returned to the unsuccessful bidders.
- All bids must be publicly opened at the time and place stated in the Invitation for Bids.
- The bids must be tabulated and reviewed.

The contract is awarded to the lowest, responsible, and responsive bidder. Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

The contract must be a firm-fixed-price contract (lump sum or unit price with a maximum amount identified).

If alternates (additives or deducts) will be taken, the bid documents must be clear as to the priority order in which those alternates will be applied.

Competitive Negotiation

This method of procurement is used if the selection can be based on factors other than cost, such as experience and capacity. Procurement of architectural, engineering, planning and administrative services fall under this category. Subrecipients shall seek permission from HCD prior to using competitive negotiation for contracts other than architectural, engineering, planning or administrative services. Only fixed-price contracts or hourly contracts with a not-to-exceed figure may be awarded.

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

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

The following requirements apply to the competitive negotiation procurement process:

- The RFP or RFQ must be advertised in a newspaper of daily general circulation in the area at least one time not less than fourteen days before the date set for the opening of proposals. The subrecipient may also be required to publish in non-English newspapers based on their Language Access Plan.
- The RFP must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers and trade publications beyond the immediate locality of the work to be completed.
- If an RFP is used, it should specify the scope of services to be provided and the type of contract to be used: fixed price, or an hourly rate with a not to exceed figure.
- An RFP should also:
    - Specify that cost and pricing data is required to support the proposed cost;
    - State anticipated start and completion dates; and
    - List evaluation criteria that will be used in ranking proposals.
- All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing. Appendix 5-5 (*CDBG Grant Management Manua*l) provides a sample: Professional Services Evaluation.
- For both RFPs and RFQs, selection is made on the basis of the most responsible offer or price with consideration given to the factors identified in the Request for Proposal or Qualifications.

For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.

- The subrecipient must maintain documentation for all services and reasons for the selection.
- The subrecipient must send an award letter to the selected contractor and document the file with it.

- The subrecipient must prepare and sign a contract formalizing a scope of work and the terms of compensation.

- The subrecipient should properly notify unsuccessful bidders in writing and document the file with the rejection letters.

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

Non-Competitive Negotiations

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

- There is some public emergency that will not permit delay resulting from competitive solicitation (the subrecipient must declare an emergency as authorized by law); or

- The results of the competitive negotiations are inadequate; or

- The product or service is available only from a single source.

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

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

- Negotiations must be conducted with the selected company regarding a scope of work and price; and

- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

Emergency Procurement Policies and Procedures

All subrecipients and Service Providers (sub-subrecipients) must develop emergency procurement policies and procedures. These procurement policies and procedures must align with the federal procurement regulations; 2 CFR 200.318-324, and they must include detailed steps and processes to be taken during regular business operations.

In addition, the procurement procedure document must include a section that clearly provides detailed steps of how to implement compliant procurement processes and documents during, 1) a state of emergency, 2) federal and/or state executive orders, 3) state and/or HUD special waivers and, 4) one time funding allocations.