



Sub-Recipient Procurement Guide

City of San Antonio
Neighborhood and Housing Services
Department

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Procurement Summary

The purpose of this procurement guide is to provide sub-recipients minimum standards for awarding U.S. Department of Housing and Urban Development (HUD) funded contracts in accordance with local, state, and federal procurement guidelines.

Recipients of HUD funding must comply with the federal procurement requirements of 2 CFR 200. These regulations direct that all supplies, equipment, construction and services be acquired efficiently and economically, through open and fair competition. Sound business judgment must be used not only in the acquisition of supplies, equipment, construction, professional, and non professional services, but in the settlement of all contractual and administrative issues, protests, disputes and claims.

General Procurement Regulations

2 CFR Part 200.318

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. 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. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged

to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be 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. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

Competition

2 CFR Part 200.319

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient

requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current (list should be updated every 2 years) and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

Methods of Procurement to be Followed

2 CFR Part 200.320

Procurement by Micro-Purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$3,000 (\$200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

Procurement by Small Purchase Procedures

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold of \$150,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources (at least 3 oral or written price quotations).

Procurement by Sealed Bids (Formal Advertising)

Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

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

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

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;

- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

Procurement by Competitive Proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Procurement by Non-Competitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

2 CFR Part 200.321

(a) The non-Federal entity must take all necessary affirmative steps to assure those minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Contract Cost and Price

2 CFR Part 200.323

(a) 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.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Federal Awarding Agency or Pass-Through Entity Review

2 CFR Part 200.324

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where

there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

Bonding Requirements

2 CFR Part 200.325

For construction contracts or subcontracts exceeding the “Simplified Acquisition Threshold”, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Contract Provisions

2 CFR Part 200.326

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Retainage

Retainage is money earned by a contractor but not paid to the contractor until the completion of construction or some other agreed-upon date. The amount is held back as assurance for the quality of the work and compliance with local, state, and federal regulations. The City requires at least a 10% retainage from all construction contracts.

Bid Protest Procedures

A Bid Protest is a mechanism by which a bidder may contest the procedure or recommended outcome of a contract award by the Sub-recipient. Once a contract has been awarded, bidders will have 5 business days of notification award to submit a written protest. Sub-recipients may not execute an agreement with a contractor until the 5 day period is completed and in the event of a protest, the protest procedures have been followed.

Grounds for Protest: Only protests alleging an issue concerning the following subjects shall be considered:

1. Errors in computing tabulation or evaluation of bid
2. Violation of Rules or Statutes
3. Discrepancies with material differences or quality of items

Protests must contain at a minimum:

1. Name, address and telephone number of the protester
2. Signature of the protester or its representative and evidence of authority to sign
3. Item(s) of protest
4. Detailed statement of the legal and factual grounds of the protest including copies of relevant data
5. Form of relief requested

When the Sub-recipient receives a timely written protest, the agency must submit evidence to the City of the following prior to proceeding with any construction activity:

1. A copy of the protest letter
2. Evidence the awarded bidder was notified of the protest
3. Evidence that an informal hearing or committee reviewed the protest to evaluate the facts and merits of the protest and make a determination whether or not to accept or reject the Protest
4. Documentation showing the protest determination

The City is not involved in the informal hearing process nor does it assist in making a determination; the City only documents the proper procedures were followed.

Contract Amendments

Amendments to contracts change the original terms or conditions of the existing agreement. The amendments can be in the form of contract modifications, change orders, or extensions. Any modifications cannot change the scope of services extensively or add anything to the scope of services that was not the original intent of the scope of services. Such modifications will require the project to be rebid.

Contract Modifications

Contract modifications are any alterations, additions or deletions to the original terms of a contract. A written executed contract amendment must exist for all contract modifications. Written notification to the City and approval by the City is required for all contract modifications between the Sub-recipient and Contractor.

Contract Extensions

Some contracts contain options to extend the term of the agreement, with notice prior to contract expiration. The Sub-recipient must submit a written request to the GMA Grants Administrator for approval at least 30 days before City's contract expires. A sub-recipient must provide written notification to the City upon extending a contract with a contractor.

Change Orders

A change order is an "amendment" to a contract that changes plans or specifications that become necessary after the performance of the contract has begun, or decreases or increases in the quantity of work to be performed, or of materials, equipment, or supplies to be furnished. Change orders must be approved by Sub-recipient prior to contractor proceeding with modifications. The cumulative cost of change orders cannot increase or decrease the original contract price by more than 25% or the Sub-recipient must re-bid the remainder of the project.

All change orders must be submitted to the City in writing and include:

- Description of proposed change in scope and explanation/ justification for changes
- Plans and specifications, if applicable
- Price (credit, debit, or no change) for the change in contract work
- Estimate of additional time, if any, required to complete the work
- Contractor's itemized breakdown of the cost of materials and labor and an itemized breakdown for any applicable subcontractors, and the change indicated on the architectural or engineering drawings, if applicable

Davis Bacon Wage Compliance and Procurement

The Davis Bacon Wage decision or wage determination is a listing of various construction work job classifications such as carpenter, electrician, plumber, etc. and the minimum wage rates and fringe benefits that people performing work in those classifications must be paid. Wage decisions are established for various types of construction categories (e.g., residential, building, heavy highway) and apply to specific geographic areas.

Davis-Bacon or Related Acts apply for the following:

- \$2,000 or more of CDBG funds used for Construction, Rehabilitation, Demolition & Site Preparation
- Housing with 12 or more HOME-assisted units

Prior to Bid Solicitation

Sub-recipient must provide Davis-Bacon wage decision and labor standards contract provisions applicable to the project. The provisions are to be contained in the bid specifications and summarized in the bid advertisement. Language in the bid document should cite that the contract is covered by the Federal Davis-Bacon Act and that wage requirements, not less than the prevailing wage rate as set forth in the wage determination, are paid to workers during construction.

During the Open Bid Period

Ten days before the bid opening, the Sub-recipient/contractor must check to see if the wage decision is still current by checking <http://www.access.gpo.gov/davisbacon/TX.html> or calling HUD Labor Relations staff. If no change occurred, document this to the file. If a change occurred, determine if sufficient time exists to notify all bidders. Sub-recipients/Contractors should determine if a modification affects your project activities, and, if so, send out notice to bidders. Verify eligibility of principal contractor through the Federal Debarment Listing.

Upon Contract Award

Each contract subject to Davis-Bacon requirements must include the wage decision, Form HUD 4010, and the appropriate HUD contract provisions containing the labor standards clause. If construction has not started within 90 days of award, a new wage decision is required. A Pre-construction meeting is required. City staff, including a representative from Labor Compliance must be in attendance. At the meeting, the Labor Compliance officer provides the necessary labor provisions, identifies responsibilities, and obtains the proper wage decisions for all classifications on the job and disseminates information. The City representative will review additional compliance and reporting requirements with the agency and general contractor.

Section 3

The purpose of Section 3 of the Housing and Urban Development Act of 1968 is to ensure that economic opportunities be directed to low-income persons and to businesses which provide economic opportunities to low-income persons. Section 3 applies to contracts or subcontracts that exceed \$100,000.

Section 3 goals:

Employment

The federal government request a goal of thirty percent (30%) of the aggregate number of new hires during a one year period of the project be Section 3 eligible persons. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

Contracting

a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds should be eligible Section 3 businesses;

b) At least three percent (3%) of the total dollar amount of all other covered Section 3 contracts to eligible Section 3 businesses.

For more details regarding Section 3, how to become a Section 3 Certified Business or Individual, and Income Limits please visit: <http://www.sanantonio.gov/gma/programs/Section3.aspx>.

CHDO Procurement

As noted in HUD CPD Notice 97-11, Community Housing Development Organization (CHDO) organizations operating independently of the City are not subject to the requirements of 24 CFR Part 84 in regard to the procurement of goods and services. This exemption is only applicable to procurement associated with CHDO organization acting in a CHDO developer, owner, or sponsor capacity for CHDO eligible projects. CHDO organizations acting as a Sub-recipient must still follow appropriate procurement procedures compliant with this guide.

Federal funding requires all recipients to ensure cost reasonableness for all transactions; the CHDO must ensure all costs are considered reasonable by obtaining cost estimates or following an appropriate procurement methodology.

Records Retention

The Sub-recipient must maintain complete files on all procurement activities and the original signed contract to demonstrate compliance in the above requirements. For CDBG funded project, files must be maintained for a minimum of 4 years after the last CAPER is submitted which reports the activity completed. HOME funded project files must be maintained for 5 years after project completion. However, the executed agreement shall direct the specific timeframe to retain records.