

CDBG Procurement Federal Requirements & Best Practices

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11/5/2019



Overview

- Procurement Authority & Expectations
- Procurement Methods
- Procurement Timing
- Cost Reasonableness & Independent Cost Estimates
- Pre-Agreement Costs
- Resources



Resources:

<https://www.hudexchange.info/resource/5614/buying-right-cdbg-dr-and-procurement-a-guide-to-recovery/>

Resources and assistance to support HUD's community partners

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Buying Right CDBG-DR and Procurement: A Guide to Recovery

Date Published: September 2017

 Print

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Description

Community Development Block Grant Disaster Recovery (CDBG-DR) grantees and subrecipients procuring goods and services with their grant funds must ensure that they are following all program procurement statutory and regulatory requirements. The urgency in post-disaster recoveries often leads state and local officials to work to quickly restore infrastructure, public services, and help private companies and citizens make repairs. However, grantees and subrecipients that do not follow all CDBG program requirements may be forced to repay Federal funds.

This HUD Toolkit provides guidance to CDBG-DR grantees and subrecipients on how to comply with these requirements while also moving as quickly as possible to recover from a disaster.

Resource Links

- [Buying Right CDBG-DR and Procurement: A Guide to Recovery \(PDF\)](#)
- [Example Document: Competitive Bids Procurement of Design Services by RFQ \(DOCX\)](#)
- [Example Document for Procurement Using Competitive Bids: RFP for Professional Services \(DOCX\)](#)
- [Sample Document: Contract Reporting Template \(XLSX\)](#)
- [Sample Document: Cost Analysis \(DOCX\)](#)
- [Sample Document: Procurement Checklist \(DOCX\)](#)
- [Example Document: Procurement Using a Sealed Bid Solicitation for Construction Services \(DOCX\)](#)

Author Organization

HUD

Resource Approver

HUD Approved



Procurement Authority

- State Procurement Authority for Federal Programs
 - State adopted 2 CFR 200.317 procurement requirements
 - The requirements flow down to local jurisdictions participating in State program
- Local Procurement Authority
 - Local Jurisdictions should have a written (documented) procurement policy that includes the use of federal funds, like CDBG
 - Those policies can also adopt 2 CFR 200 procurement requirements for federal programs



Procurement Expectations

- Follow your policies
 - The “Do what you said you would do” rule
- Document each procurement
 - Especially if it deviates from the standard (best) process or if it uses a waiver or exception
- Plan as far ahead as you can
 - Try to incorporate all potential activity phases, full scopes of potential work, and long-term expectations
- Use your resources
 - We like questions, but we give better answers with more context, and if you have a proposed solution it will likely speed up our response



Intent of Procurement Regulations

- Encourage fair and open competition
- Prevent price gouging
- Protect the public's interest in public funds
- Support market participation for minority and women owned businesses
- Support employment opportunities for low- and moderate-income persons

Procurement Methods



Procurement Methods

- Micro Purchases
- Small Purchases
- Sealed Bid
- Competitive Proposals
- Non-competitive Proposals
(Sole-Source)
- ❖ Subrecipient Selection



Micro Purchase – 2 CFR 200.67

- Purchase of supplies or services under \$10,000 (periodically updated for inflation)

<https://www.hud.gov/sites/dfiles/SPM/documents/Memo%20M-18-18%20Micro-purchase.pdf>

- Does not require solicitation of competitive bids/proposals
- Requires need and rationale documentation
- Requires cost reasonableness documentation
- Requires documentation of best efforts to use minority and women owned firms when possible



Acme Park Bike Rack Example

Memo: Bike Rack for Acme Park: Procurement Documentation

Need: There are no bike racks in Acme park. Residents are locking bikes to trees, which damages the trunk, to benches, which obstructs the path of travel and limits the use of the bench, and to light posts, which accelerates wear and tear.

Cost Reasonableness: Compared prices for similar bike racks online on 11/4/2019. Racks must allow for at least 6 bikes at a time, and must be of commercial grade products. Park District Capital Improvement Plan identifies “wave” style bike racks as the preferred rack design.

MBE/WBE: Equipment purchase from online vendor, no MBE/WBE.





www.theparkcatalog.com: 7 Bike Wave Rack Item #543-1003 @ \$299 ea. (2 3/8" galvanized steel, includes mounting equip)

www.parkitbikeracks.com: 7 Bike Wave Rack SKU 7ZT7042 @ \$199 ea. (2 3/8" powder coated steel, mounting equip extra cost)

www.uline.com: 7 Bike Wave Rack Model No. H-2544BL @ \$450 ea. (2 3/8" powder coated steel, includes mounting equip)

the park AND FACILITIES CATALOG

Home / Bike Racks / 7 Bike Wave Rack - 2 3/8in Heavy-Duty

7 Bike Wave Rack - 2 3/8in Heavy-Duty
 \$299.00 / each Item # 543-1003

Color * Black
 Mount Type * Surface Mount

parkitbikeracks.com/park-it-powder-coated-steel-bike-racks

Home | Product SKU # 7ZT7042-BK

Park-It Bike Racks/7-Bike Rack/ Surface Mount/ Black AS LOW AS \$198.85

ADD TO CART

QUANTITY 6 PRICE \$181.85

MOUNT TYPE

BIKE CAPACITY

9 5 11 7

uline.com/Product/Detail/H-2544BL/Outdoor-Furniture-and-Equipment/5-Loop-Wave-Style-Bike-Rack-7-Bike-Capacity-Black?keywords=H-2544BL

ULINE 1-800-295-5510

Home > All Products > Facilities Maintenance > Outdoor Furniture and Equipment > Wave Bike Racks

5-Loop Wave Style Bike Rack - 7 Bike Capacity, Black

Upscale stylish look for downtown shopping and business districts.

- For stadiums, parks and athletic fields.
- 10-gauge steel with attractive powder coating.
- 2 3/8" diameter bar.
- Bike rack mounting hardware included.

MODEL NO.	DESCRIPTION	SIZE L x W x H	BIKE CAP.	WT. (LBS.)	PRICE EACH		ADD TO CART
					1	3+	
H-2544BL	5-Loop	68 x 2 1/2 x 39"	7	80	\$450	\$430	1 ADD

SHIPS VIA MOTOR FREIGHT

Additional Info Parts Shopping Lists Request a Catalog



Small Purchase – 2 CFR 200.320 (b)

- Purchase of services, supplies, or property below the Simplified Acquisition Threshold of \$250,000 (periodically updated for inflation)
- Requires everything required by micro-purchase
- Requires documented informal solicitation of bids/prices - solicitation information should be consistent for all vendors
- Requires cost reasonableness documentation
- Requires applicable federal contracting language in the contract
- Threshold includes contract modifications that increase total cost – beware of the margin



BCC Email to Regional/Statewide Vendors Example

Good Afternoon,

The Emerald City is looking to contract with a consultant to prepare National Environmental Protection Act (NEPA) reviews for a housing rehabilitation program to be funded through a State CDBG grant. The City expects to rehab about 10 units, and will focus on the neighborhoods most impacted by the Wizard's recent unexpected departure.

*The consultant will be expected to prepare a regional environmental review record, with statutory worksheets for each unit. The consultant must be familiar with HUD's 8 step NEPA review process for potential flood zones. The targeted neighborhoods are the oldest residential areas in the City, so State Historic Preservation Office (SHPO) consultation is likely. Please see the **attached scope of work** for additional details. Please complete the **attached bid form** if you are interested in responding to this solicitation.*

Contact: Dorothy Gale at dgale@emeraldcity.org for questions.

Due Date: Responses are due before 5:00 pm December 1, 2019.

Thank you for your response!

Sincerely, The Emerald City Housing Department



Sealed Bid – 2 CFR 200.320 (c)

- Formally advertised procurement for a fixed price contract (lump sum or unit price) to the lowest responsible bidder
- Should be used for all construction procurement regardless of cost
- Does not require documentation of cost reasonableness if procurement is below Simplified Acquisition Threshold, however cost analysis is always recommended
- Should follow a well-documented transparent and formal process
- Requires applicable federal contracting language in the contract



Competitive Bids – 2 CFR 200.320 (d)

- Requests for proposals for goods or services where both price and other factors (qualifications, experience, and other factors advantageous to the program) are considered in the evaluation process
- Requires cost reasonableness and independent cost estimate (ICE)
- RFP should not unduly restrict competition
- RFP should be publicly distributed in a way to ensure an adequate number of qualified sources are informed of the procurement
- RFP should include evaluation factors (e.g. scoring criteria)



Non-Competitive – 2 CFR 200.320 (f)

- Solicitation from only one contractor/vendor/consultant – also referred to as “sole-source”
- Must be thoroughly documented
- Must have written pre-solicitation approval from HCD
- Must have justification that meets federal standards
- Should include independent cost estimate (ICE)



Single Respondent vs. Sole Source

- A single respondent is when a jurisdiction completes a competitive process – whether sealed bid or RFP, and receives only one response. If the process has been documented and has followed all of the required steps, then the single response may be deemed adequate
- Sole source is when a grantee only asks for a bid or response from one contractor/vendor/consultant



Subrecipient Selection

- Subrecipients are selected, not procured
 - Formal application process with application evaluations and established criteria
 - Request for Qualifications from qualified organizations
 - Unsolicited applications or proposals
 - Grantee guided application or proposal
 - Combination of approaches
- Establish and document the selection procedure to support subrecipient status



Procurement Documentation

- Memo for each phase of the procurement
 - Pre Award
 - Rational for procurement method
 - Need for service/item
 - Pre-bid independent cost estimates (if applicable)
 - Solicitation process
 - Efforts to solicit from minority and women owned businesses
 - Communication with potential bidders
 - Evaluation criteria (if applicable)
 - Contract type (if applicable)



Procurement Documentation Cont.

- Award
 - Receipt of all proposals (time-stamped if necessary)
 - For sealed bids, bid opening date and process
 - Evaluation process (such as scoring) for each proposal
 - Cost reasonableness analysis (if applicable)
 - Price negotiations with contractors/vendors/consultants
- For detailed documentation requirements for each procurement method, see the Buying Right guide
- Documentation does not stop at award, should also include contract administration
 - Amendments, negotiations, administration communication, payments, percent complete, deliverables, milestones, program/project progress



Contracts Vs. Subrecipient Agreements

- Contracts
 - Competitively procured
 - May be with a non-profit if competitively procured
 - Does not need to comply with 2 CFR 200 uniform guidance administrative requirements (however the contract must include contract provisions in Appendix II)
- Subrecipient Agreements
 - Designated, not competitively procured.
 - Must be Non-Profit or authorized Community-Based Development Organization (CBDO) under 24 CFR 570.204 (c)
 - Must comply with 2 CFR 200 uniform guidance for administrative requirements (much like a grantee)
- 2 CFR 200.330
- <https://files.hudexchange.info/resources/documents/CDBG-Memorandum-Distinctions-between-Subrecipient-and-Contractor.pdf>

Questions!

Procurement Timing



Procurement Timing

- CDBG application readiness requirements
 - Aligned with activity type
 - Specific readiness requirements will be identified in the application, but will be based on the general condition checklists currently on the HCD website
 - Contractors and Consultants can be used to meet experience and readiness requirements
 - CDBG program guidelines allow reimbursement for eligible pre-agreement costs upon successful award
 - Procurement method and timing is critical to make sure the costs will be eligible for reimbursement



Procurement Planning

- If federal funds are a consideration for a project, activity, or purchase, then follow federal procurement requirements
- Plan at activity concept
 - If you want to use the same contractor/consultant throughout the project or on multiple phases, then you must procure for the full scope of work
 - Use budget options or additives to get costing for the full scope of work
 - Use conditions in the contract to restrict or phase the scope of work to available funds



Procurement Planning Example

Project Concept: Water infrastructure improvement

Phase 1 (2020) is W. Main water main replacement

Phase 2 (2023) is E. Main water main replacement

Project Funding: State Water Board , USDA, and CDBG

Project Components: Feasibility analysis, NEPA clearance, designs and specs, funding applications, CEQA approvals, project entitlements, project management, grant management, project reporting, labor compliance, budget management, project closeout

Goal: Use the same engineering consulting firm for all project components to encourage project continuity



Request for Proposals Scope Example

- Must include both phases with timing for each phase
- Must include all potential required work
 - Feasibility analysis,
 - NEPA clearance,
 - Designs and specs,
 - Funding applications,
 - CEQA approvals,
 - Project entitlements,
 - Project management,
 - Grant management,
 - Project reporting,
 - Labor standards compliance,
 - Project budget management
 - Project closeout
- Must request pricing for all work for both phases





Condition Contracts Example

- Contract includes both Phase 1 and 2 of project, for all activities in the RFP scope of work
- Contract immediately authorizes work on select Phase 1 tasks:
 - Feasibility analysis,
 - NEPA clearance,
 - Designs and specs,
 - Funding applications,
- Contract requires an amendment to move past Phase 1 tasks.



Condition Contracts Example Cont.

- Contract conditions work on remaining Phase 1 tasks on the award of project funding:
 - CEQA approvals,
 - Project entitlements,
 - Project management,
 - Grant management,
 - Project reporting,
 - Labor standards compliance,
 - Project budget management,
 - Project closeout
- Contract conditions work on Phase 2 to successful completion of Phase 1, and may additionally condition tasks to funding availability.
- No obligation to complete contract when conditions are not met.



Methods and Timing Summary

- Start planning for procurement at project concept
- Make sure to select the most appropriate procurement method – if the potential procurement cost is at the threshold, be conservative
- If possible, procure for the full project, even if it isn't fully funded – use contract conditions and contract amendments to phase tasks
- Document your process – use emails to demonstrate easy time-stamps for time sensitive documentation
- When in doubt, do some research, don't assume

Questions!

Cost Reasonableness & Independent Cost Estimates



Cost Reasonableness

- Stewardship of public funds to make sure costs are reasonable for goods or services provided
- Price analysis – price comparison of total sum
- Cost analysis – evaluation of the separate elements that make up the total cost
- Cost reasonableness may be performed by grantee staff or by an independent consultant
- Cost reasonableness **cannot** be based on received bids



Independent Cost Estimates (ICE)

- Step 1 – if an ICE is required, identify whether or not staff have the expertise and/or capacity to complete the estimate
 - For construction projects the ICE is often prepared by an engineer or architect
 - For items or goods with unit prices, the ICE may just be a simple price comparison of similar goods or various brands - price comparison results should be time stamped (such as emails or screen shots)
 - Cost analysis requires evaluating the components of the activity and is typically more time consuming
 - If staff do not have expertise/capacity consider procuring a cost estimator



ICE Cont.

- Step 2 – Identify cost estimating resources
 - Have you recently contracted for a similar good or service that can be used as cost data?
 - Have your neighbors? It is ok to share info!
 - Is cost information available online or through a cost estimating tool?
 - Is there market research available? If not, can you do market research? This may mean calling vendors and/or looking out-of-state



ICE Cont.

- Step 3 – Document your process
 - Who, when, what, and where you get your cost data
 - Similarities and differences between cost analysis resources and the needed good or service
 - Rationale for weighting or inflating costs in the estimate
 - How the component costs are structured – what tasks and deliverables are in each component



ICE Cont.

- Step 4 – Complete your estimate
 - If you plan to use a specific budget template in your procurement, use that template (or similar) for your ICE
 - Time-stamp your ICE – it should be complete before you receive bids to prove it is independent
 - Make sure the documentation gets into your procurement package, including any memos and time stamps



Sample ICE Form

ICE pro-tip: If you don't have a designated budget template or required bid form in your RFP, consider requiring bidders to respond with a per task or per deliverable budget that corresponds to your scope of work to help standardize your responses and make it easier to prepare and use your ICE. Email the ICE to yourself and your local procurement administrators to document that it was completed prior to the bid due date.

State of California							
INDEPENDENT COST ESTIMATE							
REQUESTING AGENCY:			AUTHORIZED AGENCY REPRESENTATIVE & TITLE:			DATE:	
ESTIMATE PREPARER (PRINTED):				PREPARER'S PHONE NUMBER:		PREPARER EMAIL:	
PROCUREMENT METHOD:	SMALL PURCHASE	SEALED BIDDING	RFP	RFQ	SOLE SOURCE	INTER-AGENCY	
PLACE CHECK IN APPROPRIATE BOX							
ESTIMATED WORK TYPE:	PUBLIC WORKS	MATERIALS + SUPPLIES	SERVICE CONTRACTS	A/E SERVICES	INTER-AGENCY MOU: PLEASE LIST AGENCY		
PLACE CHECK IN APPROPRIATE BOX							
DESCRIPTION OF ITEM(S) OR SERVICE(S) REQUIRED							
ESTIMATE TYPE:		ARE COSTS WITHIN COST THRESHOLDS FOR PROCUREMENT METHOD AND WORK TYPE?				YES	NO
RS MEANS		IS THIS COST ESTIMATE FOR EMERGENCY SERVICES OR A/E SERVICES?				YES	NO
PUBLISHED PRICING / QUOTES		IS THIS FOR A MODIFICATION OF AN EXISTING CONTRACT				YES	NO
OTHER		IF YES IS ANSWERED FOR ANY OF THE ABOVE ICE MUST BE ROUTED TO PURCHASING FOR APPROVAL.					
# OF ATTACHMENTS		LIST OF ATTACHMENTS:					
# PAGES ATTACHED (NOT INCLUDING THIS PAGE)							
GRAND TOTAL OF ESTIMATE							
\$							
THIS DOCUMENT IS FOR COUNTY INTERNAL USE ONLY AND RESULTS OF ESTIMATE ARE NOT TO BE MADE PUBLIC PRIOR TO FINALIZATION, PURCHASE, OR EXECUTION OF CONTRACT							
PREPARER OR THE AUTHORIZED AGENCY AGENT'S SIGNATURE						DATE	
PURCHASING DEPARTMENT'S AGENT'S SIGNATURE						DATE	



Cost Analysis Variances

- If your ICE and your bid prices come in fairly close (or you can easily explain the variances), you are good to go!
- If there are large unexplainable variances;
 - It may indicate that bid respondents do not understand the RFP or plans and specs the way you intended
 - It also may indicate the plans/specs or scope of work is incomplete and contractors are trying to fill in the gaps
 - There may be a volatile market or a market shortage or cost data might be too old
- Grantees with large cost analysis variances should carefully evaluate the procurement method and documents to make sure they are correct
 - Evaluate if the received bids/costs are comparable
 - Make sure the bids are truly responsive/responsible and all of the federal contracting requirements were included
- If you run into trouble, contact your representative and we will do our best to help find a solution.

Questions!

Pre-Agreement Costs



Pre-Agreement Costs

- Pre-Agreement costs are eligible costs incurred for an eligible activity before the Standard Agreement is executed
- CDBG regulations allow for the reimbursement of eligible pre-agreement costs post-award
- All pre-agreement costs are incurred at the applicant's risk. HCD is not responsible for reimbursing pre-agreement costs if no award is made



Cost Eligibility

- **Costs must be eligible**

- Costs must be associated with an activity that will meet a National Objective
- Procurement must meet federal procurement requirements
- Costs must be included on the grant application in the budget
- Costs will count against general administration and activity delivery caps
- Costs will count toward the application and award limits
- Costs should not be prior to six months before the date the application is submitted (no stale costs)
- Costs must be well documented and include:
 - Procurement record (if applicable)
 - Contracts, invoices, and statements (if applicable)
 - Time-cards, personnel information, and task descriptions for staff costs
 - Receipts, and other proof of payment



Common Pre-Agreement Activities

- Capital Projects
 - Feasibility Analysis
 - NEPA Clearance
 - Plans and Specs (up to bid-ready documents)
- Programs
 - Guidelines and program documents
 - NEPA Clearance
 - Marketing and/or program roll-out plans
- INELIGIBLE – No direct activity costs, wait until you have your award to start spending on your activity.



Pre-Agreement Cost Process

- Pre-agreement costs must be budgeted into the activity and included in the application
- Pre-agreement costs that exceed the amounts in the application budget will not be eligible for reimbursement
- Pre-agreement costs that did not meet federal procurement standards will not be eligible for reimbursement
- Procurement records and cost eligibility documentation must be included with the activity application
- Costs can only be reimbursed after the standard agreement is fully executed



Pre-Agreement Costs and Program Income (WARNING! HIGH RISK)

- Program Income can be used for pre-agreement costs, HOWEVER:
 - Costs must be eligible and meet procurement standards
 - Costs must be included on the project application budget (even if the project is funded only with PI)
 - If the costs are found to be ineligible, PI will required to be returned to the state, and the jurisdiction may be precluded from retaining PI until program deficiencies are addressed
 - Costs are at risk until the activity is officially approved and the jurisdiction is given formal authorization to proceed



How Do I Know if My Pre-Agreement Costs are Eligible?

- The cost would be eligible after award
- The cost is associated with readiness or threshold criteria in the NOFA
- The cost is directly connected to an activity that will meet a national objective
- The cost is current
- The cost is related to submitting the application for funding
- If you have questions, contact your program representative



Aging Pre-Agreement Costs

- HUD allows pre-agreement costs up to 24 months before award.
- HCD is piloting pre-agreement costs as part of the State CDBG program – the pilot program for this year has a 6 month pre-agreement period.
- If the pilot is successful at improving expenditure without substantially increasing risk, the pilot will be formalized.
- Future NOFAs may allow for longer pre-agreement eligibility periods as per HUD.



Pre-Agreement Costs in Practice

- Timing for pre-agreement procurement is critical. If costs age too much, they won't be eligible for reimbursement
- Programs and projects need to be carefully planned so that they have the best opportunity for funding and implementation
- Jurisdictions should carefully consider risks involved with incurring pre-agreement costs
- Document EVERYTHING!

Pro-tip: Tabbed project binders (or well-organized digital files) that use the monitoring checklists as Tables of Content can help mitigate program risk and make applications and monitoring much easier – start early!

Questions!

Resources



Resources

Federal Regulations

State CDBG: 24 CFR 570 (570.480 – 570.497)

<https://www.law.cornell.edu/cfr/text/24/part-570/subpart-I>

Uniform Admin Requirements: 2 CFR 200 (200.317 – 200.326)

<https://www.law.cornell.edu/cfr/text/2/part-200/subpart-D#subjgrp31>

Basically CDBG for States

<https://www.hudexchange.info/resource/269/basically-cdbg-for-states/>

Buying Right – CDBG-DR and Procurement, a Guide to Recovery

<https://files.hudexchange.info/resources/documents/Buying-Right-CDBG-DR-and-Procurement-A-Guide-to-Recovery.pdf>

If you have additional questions, or if you think of something as you go, reach out!
Contact: CDBGRedesign@hcd.ca.gov