

SECTION D: PROCUREMENT AND CONTRACTING

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PROCUREMENT AND CONTRACTING

GENERAL REQUIREMENTS

IF A GRANTEE PLANS TO USE LCDBG FUNDS TO PAY FOR CONTRACT SERVICES, THE FEDERAL AND STATE PROCUREMENT REQUIREMENTS MUST BE MET TO AVOID COSTS BEING DISALLOWED.

The federal requirements applicable in securing contract services [engineering, consulting and other professional services, and construction and supplier services] are located at 2 CFR part 200.318-200.326.

[2 CFR 200.318 – 326](#)

A procurement policy must be written and adopted prior to securing contract services. If a procurement policy is already in place, the Grantee must determine whether it includes all federal requirements contained in 2 CFR 200.318-200.326. If the policy does not contain all federal requirements (and the Grantee intends to use LCDBG funds to pay for such services), the policy must be amended accordingly. A sample Procurement Policy is included as [Exhibit D-1](#) as a guide. The sample policy should be adjusted based on community size.

The Grantee’s procurement policy must address the following:

- A code of conduct that prohibits elected officials, staff, or agents from personally benefiting from LCDBG procurement must be included. The policy should prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors. Sanctions or penalties for violations of the code of conduct by either Grantee officials, staff or agents, or by contractors or their agents must be identified.

[2 CFR 200.318\(c\)\(1\)](#)
- Proposed procurements must be reviewed by staff to avoid unnecessary and duplicative purchases. Also, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

[2 CFR 200.318\(d\)](#)
- Affirmative efforts must be undertaken to hire women-owned business enterprises, minority firms and labor surplus firms, both by the Grantee and the project’s prime contractor.

[2 CFR 200.321](#)
- The method of contracting outlined in the policy should be acceptable (fixed price, cost reimbursement, , or time and materials, etc.). Cost plus a percentage of cost contracts are specifically prohibited if LCDBG funds are involved.

[2 CFR 200.324\(d\)](#)
- Procedures to handle and resolve disputes relating to procurement actions of the Grantee must be included.

[2 CFR 200.318\(k\)](#)
- All procurement transactions, regardless of dollar amount, must be conducted to provide “full and open competition”. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

[2 CFR 200.319](#)

- Placing unreasonable requirements on firms in order for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive awards to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only a “brand name” product instead of allowing an “equal” product to be offered and describing the performance of other relevant requirements of the procurement.
- Any arbitrary action in the procurement process.
- Methods of procurement to be followed when purchasing materials and supplies or contracting for services must be included. [2 CFR 200.320](#)

CONFLICTS OF INTEREST

Conflicts of interest in the award and/or administration of contracts must be avoided. “No employee, officer, or agent must 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.” Grantees must also comply with conflict-of-interest requirements in 24 CFR 570.611. [2 CFR 200.318\(c\)\(1\)](#)
[24 CFR 570.611](#)

Conflicts of interest may be governed also by state law ([Louisiana Code of Governmental Ethics](#)) or local law or ordinance.

OPEN COMPETITION

Since 2014, the Federal grant regulations regarding full and open competition state: “In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals must be excluded from competing for such procurements.” [2 CFR 200.319\(b\)](#)

A solicitation that just follows the minimum State or local requirements for publicizing solicitations and which fails to obtain two or more qualified responses will not be considered sufficiently publicized under the Federal procurement regulations and guidance. Federal procurement guidance states that a solicitation must be run for a period sufficient to achieve effective competition. Advertising in a local newspaper whose circulation area does not provide an appropriate number of qualified firms or sources in the circulation area will not be deemed sufficiently publicized. Advertising may also include publishing the solicitation on the entity’s website, Facebook page, or other public forum.

Policy and records. The federal procurement regulations require that the Grantee document rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price for all procurement transactions in adherence to its procurement policy.

INDEPENDENT COST ESTIMATES

CFR 200.323 requires Grantees to perform a cost or price analysis in connection with every procurement action more than the Micro Purchase Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the procurement situation, but as a starting point, the Grantee must make independent estimates *before* receiving bids or proposals. Documentation of a cost estimates and cost/price reasonableness will be checked at monitoring.

[2 CFR 200.324\(a\)](#)

SECTION 3 COMPLIANCE

INTRODUCTION

Section 3 of the Housing and Urban Development Act of 1968, as amended, ("Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs be directed to low and very low-income persons in the project area (regardless of race or gender). The priority of assistance should be to those who are recipients of government assistance for housing, and business concerns which provide economic opportunities to low and very low-income persons.

The Section 3 program was created to ensure that persons living in communities where HUD assisted programs were being funded could economically benefit from the resources being spent. This would improve the overall socioeconomic condition of not only the community, but also the low and very low-income residents that reside within the neighborhoods.

The implementing regulation for Section 3 can be found at [24 CFR Part 75](#).

APPLICABILITY

Whenever any portion of CDBG funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 may apply.

Section 3 applies to all projects that receive \$200,000 or more in CDBG, HOME, or other HUD covered assistance, including projects that are financed in conjunction with state, local or private matching or leveraged funds. Accordingly, if \$200,000 of Section 3 covered financial assistance is invested into a project involving housing demolition, rehabilitation or construction, or the rehabilitation or construction of public buildings, facilities, or infrastructure, the requirements of Section 3 apply to the entire project, both HUD and non-HUD funded portions. In particular:

- Section 3 applies to recipients of CDBG funding, as well as its subrecipients, contractors and sub-contractors; and

- Professional service contract labor hours (construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and construction draw inspection and prevailing wage labor compliance) are not required to be reported.
- If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

The regulations should not be construed to mean that recipients are required to hire Section 3 Workers or award contracts to Section 3 Business Concerns other than what is needed to complete covered projects and activities. If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, reporting is still required.

The Grantee should discuss these requirements as a separate item at the PRE-CONSTRUCTION CONFERENCE or whatever other means the Grantee utilizes to notify the prime contractor(s) of their responsibilities. When CDBG (and other HUD funding) to the project exceeds \$200,000, the Section 3 Assurances (included in [Exhibit D-2](#)), the Project Workforce Report ([Exhibit D-3](#)), the Subcontractor Utilization Report ([Exhibit D-4](#)) must be completed by the prime and all subcontractors **prior to receiving CDBG funds.**

Grantees must document their efforts to comply with Section 3 through maintenance of a “good faith efforts” file. The file should contain memoranda, correspondence, advertisements, etc., illustrating the Grantee’s and the contractor’s attempts to reach eligible persons and businesses. Documentation should support attempts to comply with Section 3.

SECTION 3 PART 75 DEFINITIONS

The following definitions also apply to this part:

Contractor means any entity entering into a contract with a recipient or subrecipient to perform work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project.

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act. These limits are typically established at 80 percent of the area median individual income. HUD income limits may be obtained from: <https://www.huduser.gov/portal/datasets/il.html>.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

1. A business concern meeting at least one of the following criteria, documented within the last six-month period:
 - a) It is at least 51 percent owned and controlled by low- or very low-income persons;
 - b) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
 - c) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
2. The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.
3. Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of covered assistance to the project exceeds a threshold of \$200,000.

Section 3 worker means:

1. Any worker who currently fits or when hired within the **past five years** fit at least one of the following categories, as documented:
 - a) The worker's income for the previous or annualized calendar year is below the 1-person income limit established by HUD.
 - b) The worker is employed by a Section 3 business concern.
 - c) The worker is a YouthBuild participant.
2. The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.
3. Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker for CDBG assisted projects is a Section 3 worker who:

1. is employed by a Section 3 business concern; or
2. currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or
 - b. A YouthBuild participant and
 - c. Does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act. These limits are typically established at 50 percent of the area median individual income. HUD income limits may be obtained from: <https://www.huduser.gov/portal/datasets/il.html>.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

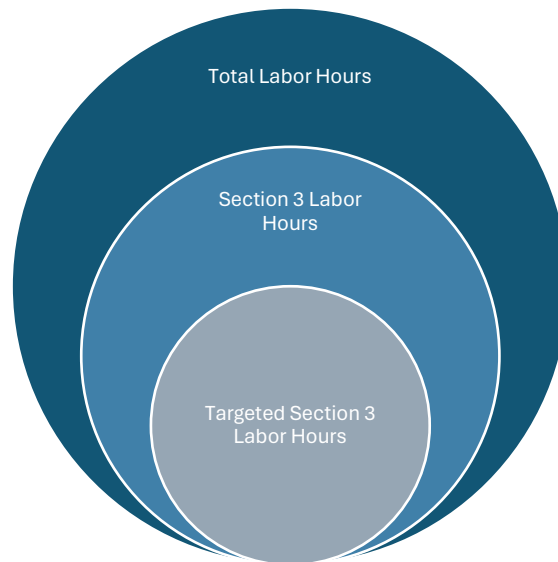
GRANTEE RESPONSIBILITIES

A local government that receives CDBG funding has the responsibility to comply with Section 3 requirements. The Grantee is also required to “ensure compliance” of their contractors and subcontractors. This responsibility includes:

1. Notifying Section 3 Workers and business concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids/proposals for available contracts and job openings with the Grantee;
2. Notify potential contractors of their responsibilities under Section 3;
3. Include Section 3 language in all applicable contracts;
4. Require subrecipients, contractors, and subcontractors to meet the requirements of §75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.
5. Document action(s) taken to meet the HUD benchmarks;
6. Respond to Section 3 complaints; and
7. Submit required Section 3 reporting as a component of the final close-out report

It is imperative to notify Section 3 residents and businesses about economic opportunities. The contractor must post signs advertising new employment, training, or subcontracting opportunities that will be available as a result of the Section 3 covered projects in conspicuous places at the work site where potential applicants can review them.

Minimum Numerical Goals



Contractors and subcontractors on Section 3 covered projects are required to comply with Section 3. Accordingly, the recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 75, Subpart C, currently identified as:

- Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\text{Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

And

- Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

Contracting

Section 3 requirements apply to both the prime contractor and any subcontractors that conduct work on an LCDBG project, if HUD assistance for the entire project exceeds \$200,000. Section 3 of the Housing and Urban Development Act of 1968 requires, to the greatest extent feasible, opportunities for training and employment to be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities to low-income persons.

The Section 3 Assurances and accompanying Section 3 Subcontractor Utilization Report ([Exhibit D-4](#)) and Contractor's Project Workforce Report ([Exhibit D-3](#)) of the Contract Documents Guide found in [Exhibit D-2](#) must be completed by the prime contractor(s) and all subcontractors if the HUD funding on the project is over \$200,000.

FAILURE TO MEET GOALS

A Grantee or contractor/sub-contractor who has not met the goals set forth has the burden of demonstrating why it was not feasible to meet these goals. **Documentation must be maintained as to the actions taken by each in order to attain the goals and any impediments encountered.**

OTHER ECONOMIC OPPORTUNITIES

This documentation will be reviewed when the Grantee is monitored. Sanctions for noncompliance with Section 3 include debarment, suspension, and limited denial of participation in HUD programs.

Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of “upward mobility,” “bridge,” and trainee positions to fill vacancies and hiring Section 3 residents in part-time positions. These “other” opportunities, if provided, may be viewed by HUD as an effort to comply with Section 3 should a challenge be issued by a Section 3 resident or business concern that either the Grantee or contractor is not following Section 3 requirements.

ACTIVITIES FOR COMPLYING WITH SECTION 3

The following are examples of efforts that can be utilized to assist Grantees in reaching the specified goals in employment and contracting (**efforts must be documented in [Exhibit D-5, Final Labor Hours Compliance Report](#)**). These examples of efforts which can be undertaken to assist in reaching Section 3 residents and businesses for employment and contracting opportunities should not be considered all inclusive. **(Normal advertising is not enough. Additional guidance may be found on the HUD Section 3 webpage.)**

[HUD Section 3 Webpage](#)

- Personally notify certified residents of employment opportunities.
- Post advertisements of the employment opportunities identifying the positions, qualification requirements, and where to obtain additional information about the application process in housing developments and transitional housing in the neighborhood or **service area of the Section 3-covered project**. In addition, post advertisements **indicating Section 3 preference** at the job site, churches, apartments, and other places that low-income residents would frequent.
- Contact community organizations and resident organizations and request assistance in notifying residents of the employment positions to be filled.
- Sponsor a job informational meeting or job fair in the service area of the project. Undertake job counseling, education, and related programs in association with local educational institutions.
- Arrange assistance in conducting job interviews and completing job applications for residents of the service area where the project is located.
- Arrange for a location in the service area of the project where job applications may be collected by the Grantee or contractor representative.
- Consult with state and local agencies administering probation and parole agencies, unemployment compensation programs, etc., to assist with recruiting Section 3 residents for employment. Use local workforce office to hire new employees specifying Section 3 preference.

- Advertise the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio.
- Maintain a list of certified Section 3 residents for future employment positions.
- Incorporate into the contract a negotiated provision for a specific number of Section 3 residents to be trained or employed on the Section 3 project after selection of bidders, but prior to execution of contracts.
- Post a project notification sign in the project service area. Contracting (Also applies to contractors hiring subcontractors)
- Consider potential contractors' past records of Section 3 compliance and their current plans for the pending contract when determining their responsibility. **Refrain from entering into contracts with contractors who fail to comply with Section 3.**
- Utilize minority contractors' associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
- Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
- Provide written notice to all known Section 3 business concerns of the contracting opportunities. The SBA Registry in the categories of minority, HUBZone, and disadvantaged businesses may be used to find potential Section 3 businesses.
- Maintain a list of certified Section 3 businesses and follow up with business concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information. Give contractors a list of Section 3 subcontractors.
- Coordinate pre-bid meetings at which Section 3 business concerns could be informed of the upcoming contracting opportunities.
- Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities.
- Advise Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
- Break out contract work items into economically feasible units to facilitate participation of Section 3 business concerns where appropriate.
- Contact agencies administering HUD YouthBuild programs and notify these agencies of the contracting opportunities.
- Advertise the contracting opportunities through trade association papers, local media, such as television, newspapers, and radio. Refer to Section 3 in bid packages.
- Establish numerical goals (dollar amounts and number of awards) for contracts to Section 3 business concerns.
- Use small purchase procedures (contract may not exceed \$30,000), such as soliciting quotations from a minimum of three qualified sources. At the time of solicitation, inform the parties of the Section 3-

covered contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted. A valid attempt to obtain three quotes from qualified sources must be made and documented.

- Post a project notification sign in the project service area.

CERTIFICATION

Grantees are responsible for certifying the eligibility of workers and businesses seeking Section 3 preference. Section 3 residents may include residents of public housing, Section 8 voucher holders, recently unemployed, veterans, recipients of other federal assistance, single mothers re-entering the workforce, and recent college graduates. The Grantee should obtain a completed Section 3 Worker/Targeted Worker Certification Form ([Exhibit D-6](#)) from each new hire requesting Section 3 status if they are not automatically qualified by the contractor/subcontractor based on annualized salary. A Section 3 Business Certification Form ([Exhibit D-7](#)) should be collected from each subcontractor claiming Section 3 status.

SECTION 3 REPORTING

The Grantee must report information on all Section 3 Final Labor Hours Compliance Reports ([Exhibit D-5](#)). This report will be due before final payment can be made to the contractor and will be submitted with the Program Completion Report ([Exhibit E-6](#)).

NOTE: This form has been changed and requires additional information from that of previous years.

SECTION 3 COMPLAINTS

A Section 3 complaint may be filed by an individual representing the interests of a small business, or by a Section 3 resident, alleging non-compliance with Section 3 by the Grantee, contractor, or subcontractor. The complaint must be filed within 180 days of the alleged violations with the local HUD field office. The appropriate office can be found at www.hud.gov.

SECTION 3 CONTRACT CLAUSE

Grantees must include the **Section 3 Contract Clause** in all covered contracts. All contractors must ensure the clause is included in all subcontracts on the covered project. The Section 3 Contract Clause can be found in [Exhibit D-2: Contract Documents Guide](#).

BUILD AMERICA, BUY AMERICA COMPLIANCE

The Build America, Buy America Act (BABA) requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the “Buy America Preference (BAP)” and the specific requirements are codified in 2 CFR § 184. [2 CFR Part 184](#)

PRODUCTS COVERED UNDER THE BABA ACT

Iron and Steel: Items that consist completely or predominantly of iron, steel, or a combination of both. “Predominantly” means the cost of the iron and steel content exceeds 50% of the total cost of all the item’s components. All manufacturing processes, starting from the initial melting stage and continuing through the application of coatings, must occur in the United States.

Construction Materials: Articles, materials, or supplies used for construction activities that consist of only one of the items described below. For the purposes of the HUD Phased Implementation Waiver timeline described below, construction materials are divided into two categories: specifically listed construction materials and not listed construction materials. **Specifically Listed Construction Materials:** Items include (1) non-ferrous metals; (2) lumber; and (3) plastic- and polymer based composite building materials, pipe, and tube. **Not Listed Construction Materials:** Items include (1) all other plastic- and polymer-based materials (such as polymers used in fiber optic cables), (2) glass, (3) fiber optic cable, (4) optical fiber, (5) engineered wood, and (6) drywall. **Construction Material Standards (2 CFR 184.6)** All manufacturing processes for the construction material must occur in the United States.

Manufactured Products: Manufactured products include articles, materials, or supplies that have either been: 1. Processed into a specific form or shape, or 2. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. A manufactured product may include components that are construction materials or iron and steel products, unless the manufactured product also meets the definition of iron and steel or construction materials. In such instances, the product should be re-categorized in the appropriate category. **Determining the Cost of Components for Manufactured Products (2 CFR 184.5)** Manufactured products must meet two production requirements. First, the final product must be manufactured in the United States. Second, at least 55% of the cost of the components making up the manufactured product must be associated with components that were mined, produced, or manufactured in the United States.

BABA APPLICABILITY ON CDBG AND RHP PROJECTS

The Buy America Preference references that all infrastructure projects are included, an infrastructure project is defined broadly as any project that includes Construction, Maintenance, Alteration, or Repair (applies even if the primary purpose is not infrastructure).

Examples of CPD-funded activities that may be subject to the BAP:

- Rehabilitation of buildings and real property
- Construction of public facilities and improvements, such as streets, sidewalks, neighborhood centers, and the conversion of buildings for eligible purposes

- Utility installation or improvements
- Water systems (drinking water and wastewater)
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation infrastructure

Examples of CPD-funded activities that may NOT be subject to the BAP:

- Acquisition of real property
- Relocation and demolition
- Public services
- Shelter or public facility operating expenses
- Supportive services
- Short-term payments to prevent homelessness
- Special economic development activities
- Administrative activities
- Disaster and emergency response

GENERAL WAIVERS

HUD issued a public interest waiver for exigent circumstances, “Public Interest Waiver of Build America, Buy America Provisions for Exigent Circumstances as Applied to Certain Recipients of HUD Federal Financial Assistance”. This waiver applies when there is an urgent need by a CPD grantee to immediately complete an infrastructure project because of a threat to life, safety, or property of residents and the community. (Effective until November 23, 2027, or such shorter time as HUD may announce via Notice.)

[Public Interest Waiver](#)

HUD also issued a public interest de minimis, small grants, and minor components waiver titled “Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Certain Recipients of HUD Federal Financial Assistance”. This waives the BAP for all infrastructure projects whose total cost (from all funding sources) is equal to or less than the simplified acquisition threshold at 2 CFR 200.1 which is currently \$250,000. This Notice also waives the application of the BAP for a de minimis portion of an infrastructure project, meaning a cumulative total of no more than five percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of \$1 million. (Effective until November 23, 2027, or such shorter time as HUD may announce via Notice.)

[HUD De Minimis and Small Grants Waiver](#)

To facilitate a smooth transition to the BAP requirements, HUD established a Phased Implementation Waiver for its programs based on the date when funds are obligated to the State. All CDBG Formula Grants and Recovery Housing Program Grants funded in FY 2024 that meet BABA requirements and involve the use of Iron and Steel and Construction materials listed (i.e.(1) non-ferrous metals; (2) lumber; and (3) plastic- and polymer based composite building

[HUD Phased Implementation Waiver](#)

materials, pipe, and tube). Starting in FY 2025, all projects that meet BABA requirements and involve construction materials not listed and manufactured products will be applicable to BAP.

If it is determined that any additional construction materials are needed that were not included on the itemized cost estimate during the application phase, then the contractor is required to inform OCD-LGA and ensure BABA requirements are implemented as needed.

A Guide to Help Grantees Determine if BABA Applies has been provided as [Exhibit D-8](#)

CERTIFICATIONS

The prime contractor and all subcontractors must comply with the requirements of the BABA Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, as applicable to the Community Development Block Grant (CDBG) and Recovery Housing Program (RHP) infrastructure projects. Pursuant to the U.S. Department of Housing and Urban Development's (HUD's) notice, "Public Interest Phased Implementation Waiver for FY2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

Language has been added to the Contract Documents Guide ([Exhibit D-2](#)) making compliance with BABA a required contract clause.

A "Buy America Certification Form" ([Exhibit D-9](#)) must be completed by the prime contractor at the time of the pre-construction conference. A "Materials Certification", included in [Exhibit D-2](#): Contract Documents Guide, must be completed by the prime contractor and the architect/engineer and submitted with each pay application to the Grantee. Certifications must be maintained in the project file for monitoring by OCD-LGA.

NOTE: If it is determined that the project meets the requirements for a General Waiver, the Grantee must submit written notification to OCD-LGA that justifies the decision for the Department's review and approval.

HUD PROJECT SPECIFIC WAIVERS

Project/product-specific waivers are available on a **limited, case-by-case basis**, after OCD-LGA and HUD's review, a public comment period, and final approval from the Office of Management and Budget's Made In America Office (MIAO). A waiver should be requested from OCD-LGA if an extenuating circumstance occurs that meets one of the following criteria: 1. Public interest: Adhering to the BAP would be inconsistent with the public interest. 2. Non-availability: Covered materials are not produced in the USA in sufficient and reasonably available quantities or of a satisfactory quality. 3. Unreasonable cost: Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25 percent. If more than one Federal agency is funding an infrastructure project, project-specific waivers will require coordination among those Federal agencies prior to a determination by the MIAO. **Due to the time restraints attached to CDBG projects OCD-LGA will only approve timely waivers be sent to HUD with substantial documentation meeting the above-listed criteria.**

METHODS OF PROCUREMENT

The five allowable methods of procurement that conform to federal procurement requirements are briefly described below.

MICRO-PURCHASE

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 \$10,000.00. 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. OCD-LGA has provided a sample written procedures document as [Exhibit D-10](#).

[2 CFR 200.320\(a\)\(1\)](#)

SMALL PURCHASE

This is a simple and informal method used for securing services, supplies, or other property that do not cost more than the Small Purchase threshold provided by the [Louisiana Procurement Code R.S. 39:1596](#), currently \$30,000. Small purchase procurement consists primarily of a comparison of quotations to each other and to other sources of pricing information (e.g., past prices paid, catalog prices, etc.). This procurement method should be used when an item or a service can be solicited through a simple description, so that all potential vendors can understand and offer a quote. Another procurement method should be used if a scope of work consists of several tasks, detailed specifications, or selection procedures, such as formal evaluations, determining competitive ranges, conducting detailed negotiations, or requesting best and final offers are required. Any procurement exceeding the State Small Purchase procedures must be conducted using another procurement method. The Grantee shall not artificially divide procurements to avoid a competitive process or the solicitation of sealed bids. When the small purchase method is used, the Grantee shall do the following:

[2 CFR 200.320\(a\)\(2\)](#)

[Louisiana Small
Purchase Procedures
\(EO# JBE2020-21\)](#)

1. Obtain price or rate quotations from at least three sources for purchases between \$10,000 and \$20,000. They can be obtained by fax, email, telephone, or in writing. Three quotes must be obtained, not just requested. Whenever possible, at least one quotation should be a Louisiana Small & Emerging Business. In addition, a response of “not interested” does not qualify as a quote.
2. For purchases between \$20,000 and \$30,000, price quotations shall be solicited from five or more bona fide, qualified vendors. Whenever possible, at least two quotations should be a Louisiana Small & Emerging Business. This method of purchase is not acceptable for professional services.
3. Maintain documentation of the businesses contacted; the way in which they were contacted; the prices that were quoted; and the reasons for the firm selected.
4. Issue a purchase order or execute a contract that identifies the scope of work and the terms of compensation, as needed.
5. Payment is made after performance, delivery, and acceptance.

OCD-LGA has provided a sample written procedures document as [Exhibit D-10](#).

COMPETITIVE SEALED BIDS

The sealed bid method is used to purchase materials or supplies costing more than \$30,000 (or if the Grantee chooses not to follow the small purchase procedure) and for construction services. Used when the primary basis for award is cost. Should have two or more responsible bidders willing and able to compete effectively for the business.

[2 CFR 200.320\(b\)\(1\)](#)

[Louisiana Public Bid Law](#)

- Initiated by publishing an Invitation to Bid (ITB). Also, bids must be solicited from an adequate number of known suppliers, providing them with sufficient response time prior to the date set for opening the bids.
- Requires a 10-day advertisement in the newspaper and posting to LaPAC. Advertisements must include all bid criteria, and information on accessing the entire bid package.
- Must hold a public bid opening at the time and place set in the advertisement for bids.
- Must have a written review and tabulation of bids according to selection criteria.
- The contract must be awarded to the lowest responsive and responsible bidder. Must be a firm fixed-price contract (fixed price or unit price).
- Any or all bids may be rejected if there is a sound documented reason.
- A contract detailing the scope of work and the terms of compensation is executed.

Grantees procuring constructions services should read [Section B: Labor Compliance](#) of this manual before proceeding with the procurement process to ensure full compliance with federal labor standards requirements.

COMPETITIVE PROPOSALS

Unlike sealed bidding, the competitive proposal method permits the following: consideration of technical factors other than price; discussion with respondents concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is made to the proposer that represents the best overall value to the Grantee, considering price and other factors, including but not limited to, technical expertise, previous experience, and quality of proposed staffing, as set forth in the solicitation.

[2 CFR 200.320\(b\)\(2\)](#)

Generally, the competitive proposals method should be used whenever any of the following conditions exist:

1. The requirement cannot be described specifically enough to permit the use of sealed bidding. In other words, the work is not definite enough to accurately estimate the total cost of the contract. Therefore, the contractor would have to build monetary contingencies into their price to ensure that their costs were covered. The Grantee, in turn, would end up paying for the increase in price due to the contingency costs.
2. The nature of the requirement is such that the Grantee needs to evaluate more than just price to be sure that the prospective contractor understands the Grantee's needs and can successfully complete the contract, especially when contracting for professional services (e.g., legal, architect-engineer, accounting, etc.) where the Grantee needs specific expertise and experience.

- Initiated by publishing a Request for Proposal (RFP). Additionally, proposals must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.
- Requires a 30-day advertisement in the newspaper and posting to LaPAC. Advertisements must include all selection criteria that will be used to evaluate responses.
- Must hold a public bid opening at the time and place set in the advertisement for bids.
- Must review the responses according to selection criteria as advertised.
- Grantee may negotiate with the selected respondent to finalize the cost and scope of work to ensure the greatest value to the Grantee. Although price is a factor, the importance or “weight” of price as a factor is at the discretion of the Grantee.

OCD-LGA must approve the solicitations prior to publishing to ensure open and fair competition.

NONCOMPETITIVE PROPOSALS/SOLE SOURCE

Noncompetitive Proposals – Use only under the following conditions:

[2 CFR 200.320\(c\)](#)

- The Office of Community Development expressly authorizes noncompetitive proposals in response to a written request from the Grantee;
- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
- After solicitation of a number of sources, competition is determined inadequate.

If the solicitation method(s) used results in the Grantee receiving only one offer/proposal the Grantee must contact OCD-LGA for further instructions. It will be important for the Grantee to document its justification for why there is **inadequate** competition. Before OCD-LGA can approve moving forward with a noncompetitive award, without revising or cancelling the solicitation and re-soliciting offers or bids, OCD-LGA must review the documentation.

TYPES OF CONTRACTS

The federal procurement regulations identify three general types of contracts that may be used for contracting with private parties. They are fixed-price, cost reimbursement, and time and materials. They are described below.

[2 CFR 200.324](#)

FIRM FIXED PRICE

This contract type requires the delivery of products or services at a specified price, fixed at the time of the contract award and not subject to any adjustment on the basis of the contractor’s cost experience in fulfilling the contract. It is appropriate for use when fair and reasonable prices can be established at time of award, definite design or performance specifications are available, products are off-the-shelf or modified commercial products or services for which realistic prices can be offered, and any performance uncertainties can be identified, and

reasonable cost estimated in advance. Its advantages are that it encourages contractor efficiency and places total responsibility and risk on the contractor. Its disadvantages are that it lacks flexibility in pricing and performance. It is the most preferred type of contract and the most commonly used, requiring the least amount of contract administration. However, as discussed below under other types, it is not always possible to use firm fixed-price contracts.

COST-REIMBURSEMENT

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Grantee. Unlike a fixed price contract, the contractor may not necessarily receive the total amount of the cost ceiling. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. A cost-reimbursement contract may be used only when the contractor's accounting system is adequate for determining costs applicable to the contract, and appropriate surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

TIME AND MATERIALS

1. A time-and-materials contract provides for acquiring supplies or services based on the following:
 - a) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and,
 - b) Materials at cost, including, if appropriate, material handling costs as part of material costs.
2. In accordance with 2 CFR 200.318(j)(1) a time-and-materials contract may be used only when the Grantee has determined that no other type of contract is suitable (i.e., it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence), and the contract includes a ceiling price that the contractor exceeds at their own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price. Identified in the regulation as "Time and Materials," this type of contract is also known as a "Labor Hour," "Indefinite Delivery," or as a type of "Cost Reimbursement" contract.

[2 CFR 200.318\(j\)\(1\)](#)

CONTRACT PRICES

Below are descriptions of four different categories of prices. The types of prices are closely associated with types of contracts; Lump Sum and/or Unit Price with specified quantity for a Fixed Price contract. A Cost-Reimbursement contract may have Lump sum or Unit Price components in addition to and Billable Hours and/or Reimbursable Costs.

LUMP SUM PRICE

For definable work product(s) or deliverable(s) whose value can be expressed as a single price inclusive of all production costs [labor, materials and purchased service costs, allowable overhead and profit]. The contractor

will bear all the risks in producing the work product or deliverable at the agreed upon price. Because of the presumed certainty of contract task or item performance that qualifies a contract task or item as a Lump Sum price no adjustments to contract price are permitted. For fixed price contracts no change in quantities for any Lump Sum task(s) or item(s) would be permitted. Payment of total contract price will be made upon satisfactory performance, delivery and final acceptance of contract task(s) or item(s).

UNIT PRICE

For definable work products or deliverables whose value can be expressed as a single price inclusive of all production costs [labor, materials and purchased service costs, allowable overhead and profit] for contract tasks or items and will be needed in two more iterations at the same agreed upon price. The contractor agrees to bear all the risks and cost variance in producing or performing the contract tasks or items at the agreed upon price per unit and for the quantities specified. For fixed price contracts, no change in quantities are permitted.

BILLABLE HOURS

For work efforts that are composed of preponderantly personnel compensation costs with a minimum of outside purchases of materials and services needed to produce a work product or provide a service; the contractor will be reimbursed for applied work efforts at the agreed upon billable hourly rate(s) inclusive of direct labor compensation, overhead, general and administrative expenses, and profit [fully burdened] by job title.

REIMBURSABLE COSTS

For work efforts that require significant outside purchases of materials, services or from subcontractors in addition to the contractor's personnel compensation costs needed to produce a work product or service. The contractor's personnel compensation costs will be reimbursed for applied work efforts at the agreed upon hourly rate(s) by job title. The contractor's itemized outside purchases of materials and services will be reimbursed at invoice cost identifying items by quantities and/or cost per unit.

SELECTING THE RIGHT PROCUREMENT METHOD, CONTRACT TYPE AND PRICE

The Grantee begins by analyzing the nature of the purchase.

- a. Is the purchase a definable work product[s] and/or deliverable[s]?
- b. Does contract performance require a specified level of accomplishment?
- c. Are [all] the performance requirements reasonably certain?
- d. Are [all] the iterations or quantities certain?
- e. Will [or must] the contractor assume most [all] of the cost risk?
- f. Is price/cost the most important [or only] consideration for contractor selection?

If the answer to all of the above questions is “yes,” then one form of a fixed price purchase method is allowed—**small purchase** or **sealed bids**. Fixed price purchases typically focus on the product to be purchased with less consideration given to the producer. To qualify as a **small purchase**, it must be an item that can be procured through a simple product or

[2 CFR 200.320\(b\)\(1\)](#)

task description and not require design specifications or a detailed scope of work. Typically for a **small purchase** a single payment can be made upon completion delivery/performance. Finally, to qualify as a **small purchase** the total acquisition cost cannot exceed \$30,000. If the purchase requires specifications or a detailed scope of work and cannot be simply described, then the **sealed bid** method is appropriate. If public advertisement of specifications is required, the **sealed bid** method must be used. The required type of contract when using **sealed bids** or **small purchase** is **fixed price**. The appropriate type of price is either **lump sum** or **unit price** with specified quantities. The **sealed bid** method is required for construction services and can also be used for equipment, materials and some non-professional services.

For further details on the use of **sealed bids** for construction activities, see the section below “BID PACKAGE DOCUMENTS, ADVERTISING FOR BIDS, AND BID OPENING PROCEDURES.”

If the answer to some of the purchase questions above is “No,” especially “C. Are all the performance requirements reasonably certain?” and “F. Is price/cost the only consideration for selection?”

Then the **competitive proposal** method would be more appropriate. Unlike the fixed price purchase methods above where the focus is on the product to be purchased (principally its price), the **competitive proposal** method allows for consideration of the producer and the quality of the product to be purchased. If the answers to “A”, “B”, “C” and “D” above is “Yes” a **fixed price** contract may be permitted. If the answer is “No” to any of the preceding four, then a **cost reimbursement** contract will be required. Typically, the compatible type of price for a **cost-reimbursement** type of contract will be **billable hours** for professional services or **reimbursable costs** when other significant costs are involved. In situations where the answer to all the purchase analysis questions is “No” a **time and materials** contract would be appropriate. However, use of a **time and materials** contract must be approved by OCD-LGA after providing a justification for its use.

[2 CFR 200.320\(b\)\(2\)](#)

PROFESSIONAL SERVICES

The Competitive Proposal method described herein is applicable if the Grantee intends to use LCDBG funds for general administrative services. (This is not applicable if local funds are to pay for professional services. In this case, the Grantee should use local laws and procedures.)

Procuring professional services prior to the submittal of the LCDBG application enables the local government to begin implementing the project immediately upon grant award; therefore, the state will not allow the termination of professional services contract without a valid reason. If the local government chooses to enter into a contract with another firm different from the one procured during the application process, the local government will be required to use other funds to pay for these services. The use of LCDBG funds will not be allowed. The grant award will be reduced by the amount of funds originally requested for professional services.

COMPETITIVE PROPOSALS

The first step in procuring professional services is for the Grantee to determine what Grantee management tasks it can perform considering its own capability in the particular area and what tasks will have to be contracted out. The “Administrative Cost Reasonableness” spreadsheet on OCD-LGA’s website has a comprehensive listing of program tasks to be performed. After selecting the tasks to be contracted out you can develop a scope of services for your solicitation. The next step is to select the appropriate procurement method; because of the performance uncertainties involved a fixed price method is not appropriate therefore the **competitive proposal** method will be used.

[2 CFR 200.459\(b\)](#)

[2 CFR 200.324\(d\)](#)

This method allows for evaluating more than just price; to consider qualitative factors as well. The Grantee must decide what qualitative factors to assess in its selection process.

When using the **competitive proposal** method, the federal procurement guidance requires “consideration of one or more non-cost evaluation factors.”

Qualitative factors that can be considered are the offeror’s/proposer’s qualifications, capabilities, experience, past performance, and proposer’s approach to the project. The Grantee will next decide how to evaluate the non-cost qualitative factors—either as threshold requirements or competitive factors. Qualification thresholds are minimum qualifications that all proposers/offerors must have in order to compete but are not competitively ranked. Competitive criteria are items that will be compared and ranked among the proposals/offers. Competitive criteria must support meaningful comparison and discrimination between and among competing proposals/offers. The Grantee must then decide how much weight to assign to the competitive criteria. While **competitive proposals** typically give lesser consideration to price/cost in the scoring system; the federal guidance provides that price/ cost when combined with the non-cost evaluation factors can be significantly more important, approximately equal, or significantly less important than the qualitative factors. When considering the weighting the Grantee should assess how likely the non-cost factors will distinguish the different proposers among them.

The **competitive proposal** evaluation process can be either simple or extensive. An extensive process will include a pre-proposal conference and conducting an initial selection review by establishing a predetermined competitive range of points for proposals that would be considered to qualify for the job. All firms whose proposals scored within that range would be invited to an oral interview and asked to submit a “best and final offer”. Proposals not in the competitive range, shall be eliminated from consideration for award. The remaining proposals would then be re-evaluated, and the highest scoring firm would be chosen.

In the simplified process the Grantee would evaluate the proposal(s) according to the publicized selection criteria and award the contract to the proposal which is the most advantageous to the program, with price and other factors considered.

The simplified method is recommended in situations where the purchase requirements are repeat or familiar; the project goals or objectives are well defined, the contract tasks can be specified, the proposer’s particular performance approach is less important, the evaluation of the qualitative factors can be accomplished by thresholds rather than competitive ranking and price/cost will be a significant factor because of the minimal differentiation in the qualitative factors offered by the various proposals.

The extensive method is recommended in situations where the purchase requirements are new or unfamiliar; the project goals or objectives are general, the contract tasks are proposed by the proposer and negotiated, the particular performance approach is very important, the evaluation of the qualitative factors will be accomplished mostly by competitive ranking and price/cost will be a lesser factor because of the extensive evaluation of the qualitative factors.

The evaluation process chosen must be identified in the solicitation, and the procedure cannot be changed once the procurement process is initiated. If the extensive evaluation process is used the solicitation must identify the date of the pre-proposal meeting and the projected date of the oral interviews.

The competitive proposal process is outlined below.

- Begin by publicizing the Request for Proposals (RFP's) and/or Qualification Statements. The RFP is used when price is a factor in the selection process and the qualification statement is used when price is considered after the firm has been selected.
- To assure "proposals will be solicited from an adequate number of qualified sources" as required in the federal regulations, the Grantee should perform the following actions:
 - Advertise the solicitation in a general circular newspaper and/or the Grantee's nearest metropolitan statistical area newspaper.
 - Post the solicitation on the Grantee's website if available.
 - Do direct solicitation by mailing a copy of the request for proposals to several firms that provide administrative services.

[2 CFR 200.320\(d\)](#)

The Grantee may do one or all three of the solicitation methods above. In order to avoid the procurement from being classified as "noncompetitive" the Grantee must obtain at least two or more responsive offers/proposals. "Adequate" competition for competitive proposals is judged on the number offers/proposals received, not the particulars of the solicitation process. [See "Noncompetitive proposals" above under the "METHODS OF PROCUREMENT" section.

- The solicitation should state the following:
 - the city/parish is applying for or has been awarded an LCDBG grant;
 - the type of professional service(s) that is being solicited;
 - the location and time where the scope of services, selection criteria, minimum requirements, etc., can be obtained; and
 - the deadline for the submittal of the proposal or qualification statements.
- The solicitation cannot require one firm to provide both administrative and engineering services. However, the same firm may be procured for both services.
- The following information must be provided to all parties that responded to the solicitation (and/or mailing):

- A cover letter from the Grantee signed by the Chief Elected Official;
- Scope of services;
- Name and phone number of Grantee's contact person;
- Deadline and location for submittal of proposal and/or qualification statements;
- Selection criteria and corresponding point system that will be used to rate the proposals or qualification statements received (Criteria **must** be identified as a tiebreaker when using an "all or none" point system. The State recommends that a tiebreaker is identified for all point systems although it is not required except for the instance previously identified.); and
- A statement that the amount of funds available for the contract will be subject to LCDBG restrictions and approval.
- An evaluation process of the proposals and/or qualification statements received is required to determine whether the selection criteria and requirements are met. Please note that receipt of just one proposal and/or qualification statement requires an evaluation. It is recommended that the Grantee organize a committee of several people with knowledge of the LCDBG project, keeping in mind the Conflict-of-Interest regulations.

NOTE: Legal fees must be necessary, reasonable, and allocable to a specific task if the Grantee intends to use LCDBG funds. The Grantee need not procure an attorney if an attorney is on staff. For reimbursement, the attorney's rate of pay must be reasonable and consistent with their regular rate of pay and the Grantee must keep the following documentation: date and method of hire (minutes of council/police jury meeting, civil services procedures, etc.), rate of pay, hours worked on the LCDBG program (time sheets), and details of tasks undertaken.

The federal procurement procedures must be followed if there is not a staff attorney, and the Grantee intends to use grant funds to pay for such services. The Grantee must follow federal procurement procedures even if it has an attorney hired on a retainer basis and intends to use grant funds to pay for services performed for the grant.

Request for Proposals (RFPs)

RFPs are used to procure professional services except for the procurement of architectural or engineering services when using the competitive negotiation method.

An RFP must be prepared detailing the type of services needed and listing the selection criteria against which all responding proposals will be evaluated. Cost must be one of the selection criteria used and will be a significant factor if the simplified evaluation method is used or be a lesser amount of the total possible points when the extensive evaluation method is used. Geographical preference may not be a criterion in accordance with federal regulations.

[2 CFR 200.319\(c\)](#)

PLEASE NOTE: A firm may include the experience and background of other firms only when:

- 1. A written contractual agreement exists between firms as a partnership or as a subcontractor with a specific list the services to be provided as a subcontractor; and**
- 2. The solicitation issued specifically provides for this option.**

Qualification Statements

Qualification statements are used to procure the services of an architectural or engineering firm, using the competitive negotiation method. Qualification statements cannot be used to procure any other service. Engineering and architectural firms may be procured for administrative tasks, but the RFP procedure must be utilized to procure administrative services.

[2 CFR 200.320\(b\)\(2\)\(iv\)](#)

However, please note that HUD has determined that it is a prohibited conflict-of-interest for a consulting firm, or its subsidiary, that has a management contract with a Grantee to also have a contract for architectural or engineering services with the same Grantee.

A selection is made based on the competitors' qualifications, subject to negotiation of fair and reasonable compensation.

The qualification statements must be evaluated by the selection criteria identified in the request. The Grantee should negotiate costs with the top ranked firm.

Refer to the following exhibits for sample formats:

[Exhibit D-11](#) — Sample Advertisement Requesting Proposals (Modify for requesting qualification statements.)

[Exhibit D-12](#) — Components of Request for Proposals and Qualifications

[Exhibit D-13](#) — Sample Contract for Professional Services

ALLOWABLE COSTS

COST REASONABLENESS

Normally, competition establishes price reasonableness. Where there is minimal or no price competition to tell you if the price or estimated cost is reasonable, the Grantee must obtain a breakdown of the proposed costs and perform a cost analysis. LCDBG has provided [Cost Reasonableness Forms for both consultants and engineers](#) that can be used to meet this requirement.

[Engineering Cost Reasonableness Form](#)

[Administrative Cost Reasonableness Form](#)

ADMINISTRATION ALLOWANCES AND PRE-AGREEMENT COSTS

Grantees should refer to the Method of Distribution for the current program year for details on maximum administration expenses and allowable pre-agreement costs.

[LCDBG Plans and Reports](#)

LOCAL GOVERNMENT COSTS

A Grantee may be reimbursed with grant funds to cover general expenses such as attendance at project-related workshops, travel, staff time, legal fees, advertising fees, audit fees, and costs associated with Section 504 compliance. Staff time does not include mayors, parish presidents and council members, as their costs are unallowable under federal regulations. Reimbursements for travel costs shall be in accordance with the state's [Policy and Procedures Memorandum Number 49](#).

[2 CFR 200.444](#)

ENGINEERING/ARCHITECTURAL FEES

Such fees, even those provided under a fixed price contract, must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by the Office of Community Development is not adequate. The selected contractor must provide a completed [Engineering Cost Reasonableness Form](#) found on the OCD-LGA website. The funds allowed will not exceed those identified in the engineering fee schedules and policies located on OCD-LGA's website. If, after a project has been funded, the scope of the project changes significantly, the OCD-LGA will make a determination of an amount that will be allowed.

CONTRACT REQUIREMENTS

A professional services contract must include the following provisions:

GENERAL REQUIREMENTS

- Effective date of contract.
- Names and addresses of Grantee and firm.
- Names of representatives of Grantee and firm who will act as liaison for contract administration.
- Citation of the authority of the Grantee under which the contract is entered into and source of funds.
- Conditions and terms under which the contract may be terminated by either party or remedies for violation/breach of contract.

SCOPE OF SERVICES

- Detailed description of extent and character of the work to be performed.
- Time for contract performance and completion including project milestones, if any.
- Specification of materials or other services to be provided by both parties, such as maps, reports, printing, etc.
- No additional services may be added beyond what was publicized in the solicitation.

METHOD OF COMPENSATION

The type of contract prices for different services can vary within the same contract. Each separate service or deliverable needs to specify the type of contract, price and amount in the contract. **Never pay in advance of work.**

FEDERAL CONTRACT PROVISIONS

All contracts executed for performance of CDBG related activities must include a full and complete description of the federal contract provisions as listed in Appendix II to Part 200.

- Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- Contracts for more than the simplified acquisition threshold currently set at \$250,000, must include language requiring domestic preferences for procurements in compliance with [2 CFR 200.322](#) and the Build American, Buy America Act (BABA).
- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.
- Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has

[Appendix II to Part 200,
Contract Provisions for
Non-Federal Entity
under Federal Awards](#)

not used federal-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

It is recommended that the Grantee have its attorney review the contracts prior to execution. [Exhibit D-13](#) is a sample Contract for Professional Services.

ADMINISTRATIVE CONTRACT REQUIREMENTS

The following conditions must be included:

- All services to be performed (including the submittal of closeout documents with the exception of the audits) will be completed within the 36-month period covered by the Grantee's contract with the State. If the solicitation and contract do not contain a provision for contract extension, a new procurement must commence after the 36-month period.
- The Environmental Review Record must be submitted to the OCD-LGA, reviewed, and the Grantee be given authority by the OCD-LGA to publish appropriate notices and to request release of grant funds within five months of the date of authorization to incur costs. All other contract conditions will be cleared within five months of the date of the "Authorization to Incur Costs" letter ([Exhibit A-1](#)). If the administrative contract conditions have not been cleared at the end of the five-month calendar period, \$250 per working day will be deducted from the amount of LCDBG funds allowed for administration. If the Grantee is not using LCDBG funds to pay for administrative services, the penalty will be deducted from the construction line item in the contract and disallowed. The State reserves the right to grant a time extension where reasons for not meeting the time requirement were beyond the control of the administrative consultant.
- The amounts to be charged for pre-agreement (for approved programs only) and project administration should be separated.
- Ten percent of the contract amount will be retained until the Grantee has received the State's approval of all closeout documentation.
- The Contract Provisions identified in Part II: Terms and Conditions, of [Exhibit D-13](#) must be made a part of the contract.

ENGINEERING/ARCHITECTURAL CONTRACT REQUIREMENTS

Engineering and architectural firms may choose the Standard Form of Agreement between Owner and Engineer (or Architect) for Professional Services. The Contract Provisions identified in Part II: Terms and Conditions, of [Exhibit D-13](#) must be made a part of the contract.

- The following conditions must be included in the contract:

- Plans and specifications will be completed within five months of the date of the “Authorization to Incur Costs” letter ([Exhibit A-1](#)).
- The advertisement to solicit bids for the construction contract will be published within 30 days of the State’s “authorization to advertise for bids.”
- The amounts for pre-agreement, basic, and additional services should be identified separately.
- Grantee’s must also include in the contract the following:
 - A scope of services (*basic and additional*)
 - A timeframe for rendering services
 - Payment schedules
 - Opinions of cost
 - The Grantee’s responsibilities
 - General considerations
 - Definitions
 - Special provisions
 - Related exhibits
- Any standard contract shall be modified to include LCDBG program requirements. The program requirements are the following:
 - Construction contracts shall not contain any cost plus or incentive savings provisions. Therefore, the contract shall not refer to compensation adjustments for cost plus or incentive savings provisions.
 - The basis of payment cannot be cost plus a percentage of cost or a percentage of construction cost.
 - Payment is subject to the availability of LCDBG funds. It is understood that the amount of funds available for engineering/architectural services is contingent upon the amount of LCDBG funds the State allows. LCDBG funds will only be used for pre-agreement services and basic and additional services that are provided following the Grantee’s receipt of a grant award and an “**Authorization to Incur Costs**” letter ([Exhibit A-1](#)) from the State’s Office of Community Development. If the firm charges for the preparation of the LCDBG application, the fees must be identified separately. The firm will not be compensated from the applicable LCDBG program if the Grantee does not receive funding.
 - The final plans and specifications and cost estimate must be submitted to the Office of Community Development for review within five months of the Grantee’s receipt of an “**Authorization to Incur Costs**” letter ([Exhibit A-1](#)). In addition, the same information must be submitted to LDH for approval for those projects subject to LDH review (*sewer collection, sewage treatment, and potable/fire protection water systems*). If the plans, specifications, and cost estimate have not been submitted at the end of the five-month calendar period, \$250 per working day will be deducted from the amount of LCDBG funds allowed for basic services. If the Grantee is not using LCDBG funds to pay for basic engineering services, the penalty will be deducted from the construction line item in the contract and disallowed. The State reserves the right to grant a time extension where reasons for not meeting the time requirement were beyond the control of the engineer/architect.

- The first advertisement to solicit bids for construction must be published within 30 days of the State’s “authorization to advertise for bids.” This is required for all CDBG construction projects. Failure to comply will result in an assessment of \$250.00 per working day. The \$250 will be deducted from the amount of LCDBG funds allowed for basic services. If the Grantee is not using LCDBG funds to pay for basic engineering services, the penalty will be deducted from the construction line item in the contract and disallowed. The State reserves the right to grant a time extension where reasons for not meeting the time requirement were beyond the control of the engineer/architect.
- The Terms and Conditions in part II of [Exhibit D-13](#) must be revised to refer to the engineer/architect and must be made a part of the contract.

SUBRECIPIENTS

Federal regulations stipulate that the LCDBG program may make CDBG program grants only to units of general local government (Villages, Towns, Cities and Parishes). However, a general unit of local government recipient of the LCDBG program may utilize an unaffiliated public or non-profit entity to carry out the eligible activity(ies) of its LCDBG program when that entity has a special jurisdiction and/or capability that is outside the normal jurisdiction or capability of the local government. The local government recipient may make a “subaward” to the entity with the special jurisdiction and/or capability to carry out the eligible activity(ies) of its LCDBG program.

[24 CFR 570.480\(g\)](#)

The recipient of the subaward is called a “subrecipient”. A subrecipient will be responsible for all applicable federal compliance requirements of the CDBG program, including compliance with the Federal Audit regulations, as well as the local government recipient of the LCDBG program.

[2 CFR Part 200, Subpart F](#)

A subrecipient relationship exists when the subrecipient, through its operations:

- determines who is eligible to receive what Federal assistance or who is a beneficiary of the program;
- has its performance measured in relation to whether objectives of a Federal program were met;
- has responsibility for programmatic decision-making;
- and will utilize the assistance of the subaward to complete the eligible activity and meet the national objective of the program.

The subrecipient will be responsible for collecting and/or maintaining any records necessary to establish compliance with the national objective.

The local government recipient must enter into a written subrecipient agreement with their subrecipient. The written agreement must comply the requirements of 2 CFR 200. A sample subrecipient agreement can be found in [Exhibit D-14](#).

[2 CFR 200.332](#)

NOTE: Under the federal Uniform Administrative Requirements [[2 CFR 200.331\(a\)](#)] a subrecipient is different from a contractor [[2 CFR 200.331\(b\)](#)]. A contractor does not have the program compliance responsibilities of a subrecipient and cannot earn program income, may be a for profit entity, may charge fees above actual costs, and must be selected through a competitive procurement process.

PROFESSIONAL SERVICES/SUBRECIPIENT CLEARANCE

Federal regulations restrict awards, subawards, and contracts with parties that have been debarred, suspended, or otherwise excluded from participation in federal assistance programs. All consultants/contractors that will be paid with LCDBG funds must be determined to be eligible for federal funds on the System for Award Management (SAM) website **prior** to the execution of a contract or any payment made. Grantees should document verification of eligibility with a screenshot or printout from SAM.gov.

[2 CFR 200.214](#)

[SAM.gov Exclusions](#)

Contractor clearance must also be obtained from the Office of Community Development on administrative consulting, architectural, and engineering firms that have not provided services to Grantees under the LCDBG program within the previous five program years regardless of the source of funding ([Exhibit D-15: Verification of Professional Services Eligibility](#)). Clearance must be obtained following grant award and **before any costs** are incurred other than pre-agreement costs for eligible programs. Firms that have participated in the program within the previous five program years do not require clearance. Contractor clearance is not required for any other professional services.

PROFESSIONAL SERVICES PROCUREMENT RECORDKEEPING

The Grantee should set up a file and maintain the following documentation in order to show compliance with the applicable state and federal requirements:

[2 CFR 200.302\(b\)](#)

[24 CFR 570.490\(b\)](#)

- Copy of the advertisements requesting RFP's or qualification statements.
- Names and addresses of the three (or more) firms that were sent copies of the RFP
- Copy of the package requesting RFP's or qualification statements; such package must identify the selection criteria that will be utilized in rating the RFP's or qualification statements received.
- Description of the method used to select consultants.
- The RFP's and qualification statements received.
- Written evaluation of the RFP's and qualification statements received.
- Written statement explaining the basis of selection.
- Copy of the completed Cost Reasonableness form
- Verification of clearance of firms.

MATERIALS, SUPPLIES, AND CONSTRUCTION SERVICES PROCUREMENT

The procurement process must be in accordance with the federal requirements of 2 CFR 200 and Louisiana's Public Bid Law. One of the three methods below must be followed when procuring materials and supplies and construction services.

[2 CFR 200.318 - 200.326](#)

[Louisiana Public Bid Law](#)

- Micro-Purchase – 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 \$10,000.00. 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.

- Small Purchase – A simple and informal method used for securing services, supplies, or other property that do not cost more than the Small Purchase threshold provided by the [Louisiana Procurement Code R.S. 39:1596](#), currently \$30,000. The Grantee shall not artificially divide procurements to avoid a competitive process.
 - Obtain price or rate quotations from at least three sources for purchases between \$10,000 and \$20,000. They can be obtained by fax, email, telephone, or in writing. Three quotes must be obtained, not just requested. In addition, a response of “not interested” does not qualify as a quote.
 - For purchases between \$20,000 and \$30,000, price quotations shall be solicited from five or more bona fide, qualified vendors. This method of purchase is not acceptable for professional services.
 - Obtain price or rate quotations from no less than three sources. They can be obtained by fax, telephone or in writing. Quotes must be obtained and not merely requested. A response of “not interested” does not qualify as a quote.
 - Maintain written documentation on the names of the businesses contacted and how they were contacted; the prices that were quoted; and the basis for selecting one firm over the other(s).
 - Prepare and execute a formal contract that identifies the scope of work and the terms of compensation.
- Sealed Bids - Method used to purchase materials or supplies costing more than \$30,000 (or if the Grantee chooses not to follow the small purchase procedure) and for construction services. Used when the primary basis for award is cost. Must have two or more responsible bidders willing and able to compete effectively for the business.
 - Initiated by publishing an advertisement for bids. Also, bids must be solicited from an adequate number of known suppliers, providing them with sufficient response time prior to the date set for opening the bids.
 - Must hold a public bid opening at the time and place set in the advertisement for bids.
 - Must have a written review and tabulation of bids according to selection criteria.
 - The contract must be awarded to the lowest responsive and responsible bidder. Must be a firm fixed-price contract (fixed price or unit price).
 - Any or all bids may be rejected if there is a sound documented reason.
 - A contract detailing the scope of work and the terms of compensation is executed.

BID PACKAGE DOCUMENTS, ADVERTISING FOR BIDS, AND BID OPENING PROCEDURES

A bid package includes technical bid specifications — usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project.

Additionally, the plans and specifications must be stamped by an architect or engineer registered in Louisiana.

If the project falls under the jurisdiction of another state agency (e.g., Department of Health and Hospitals for sewer and water projects), the plans and specifications must also be approved by the cognizant state agency prior to construction. It is recommended that the approval be received prior to the advertisement for bids. Documentation of that approval must be included in the Grantee's files.

Where applicable, once the working drawings are complete, the architect or engineer must execute a certification that applicable standards of accessibility by the physically disabled have been or will be satisfied or specify the basis for exemption. Such certification must be co-signed by a Grantee official and filed in the contract documents file. A copy of the certification must be sent to the Office of Community Development. This certification must be completed for fire stations/garages and buildings constructed under the LCDBG program that will be accessible to the public. Refer to the Architect's Certification: Compliance with Minimum Standards for Accessibility by the Physically Handicapped ([Exhibit D-16](#)).

Prior to the start of construction, the Grantee must have obtained all lands, rights-of-way and easements necessary for carrying out the project. All property acquired for any activity, funded in whole or in part with LCDBG funds, is subject to the [Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 \(the Uniform Act\)](#). Included in the definition of property, among others, are rights-of-way and permanent easements. If the construction project involves real property acquisition, the Grantee should contact the Office of Community Development very early and make sure the acquisition is undertaken according to the provisions of the Uniform Act.

Although only local governments may apply for LCDBG funds, many of the public improvements are made on behalf of various third parties such as water, and sewer districts, as well as port authorities. If ownership of the LCDBG funded public facilities improvement applied for will be transferred to one of these third parties, it will be necessary for the local government to get approval from OCD-LGA to do this.

After receiving such approval, the local government will be required to enter into an Intergovernmental Cooperative Agreement that will stipulate the conditions of transfer of ownership. This agreement must be executed, and a copy forwarded to the OCD-LGA prior to closeout. Refer to [Exhibit D-17](#) for a sample agreement.

The Grantee must contact the regional notification center and the owners of underground utilities or facilities that are not members of the regional notification center for the existence and location of all underground utilities and facilities within the construction area in accordance with [R.S. 38:2223](#).

All public works contracts must contain a clause stating that any punch list generated during a construction project shall include the cost estimates for the particular items of work the design professional has developed. The estimates will be based on the mobilization, labor, material, and equipment costs of correcting each punch list item. The design professional must retain in their working papers documentation used to determine the cost of the punch list items should these matters be disputed at a later date.

The Grantee must not withhold from payment an amount more than the value of the punch list. Punch list items completed by the contractor/subcontractor(s) must be paid for upon the expiration of the forty-five-day lien period.

The base bid must include all components of the approved project. The base bid must not include any items which were not included in the approved application, or which have not received subsequent approval from the Office of Community Development.

Approved plans and specifications that include service connection lines and hook-up fees are considered "financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines" is an eligible cost as rehabilitation and will be considered as an integral part of the overall sewer or water project.

For those communities whose approved applications included the use of LCDBG funds for the construction or replacement of service connection lines, the following items must be taken into consideration:

- LCDBG funds will only pay for connection lines to residential structures which are occupied by low- and moderate-income persons. Both rental and owner-occupied units are eligible for this assistance if the residence is occupied by low- and moderate-income persons. Although LCDBG funds cannot be used to finance the cost of connection lines to homes occupied by persons above the low/moderate income limits, the Grantee must adopt and enforce a procedure which will ensure that all residences (regardless of income) will be connected to the utility system. This is necessary to meet the project impact certification (i.e., the project will completely remedy the existing violation of a state or federal standard). Also, residents cannot be counted as beneficiaries of the rehabilitation activity unless they are connected to the utility system.
- In order for low- and moderate-income households to qualify for financial assistance to pay for the construction or replacement of service connection lines under the LCDBG program, all applicants must first complete an application form provided by the local government regarding the income status of all persons in the household. All applicants must attach documentation of their income to the application. Such documentation may include but is not limited to: copies of paychecks or paycheck stubs, income tax forms, W-2 forms, or copies of social security, welfare, veteran benefits, or unemployment checks.
- At this time the Grantee should also negotiate a temporary construction easement with the private owner(s) to protect itself from any liability that may arise. See [Section C: Acquisition/Anti-Displacement/Relocation](#) of this handbook. A sample application and temporary construction easement form is shown as [Exhibit D-18](#). The exhibit form is for a sewer system but can be adapted to apply to any type of project. The Grantee is not required to use this particular form but can develop its own to suit its project's needs.
- LCDBG funds cannot be used to pay for costs associated with the connection of non- residential structures.

Some communities/parishes charge hook-up fees. A hook-up fee is a one-time access charge that the homeowner must pay for the privilege of connecting to the utility system; this fee is generally a fixed amount which is not related to the actual construction cost of the service connection line. The federal regulations governing the use of LCDBG funds to pay the hook-up fee for the homeowner is very restrictive. If the community/parish plans to

require this fee directly from the recipients of a utility system funded in whole or in part with LCDBG funds, a determination must be made by the Office of Community Development that such a fee would not have an adverse effect on the low- and moderate-income persons involved. Due to the complex federal regulations governing this matter, this office requires that all recipients which propose to collect a hook-up fee (whether from LCDBG funds or directly from the homeowner) contact the OCD-LGA to discuss such fees prior to the collection of the fees.

All recipients of funds under the LCDBG program must post a sign in each target area for the purpose of informing the public that the work is being financed with a grant from the Louisiana Division of Administration. The cost of the project sign should be included in the bid package. [Exhibit D-19](#) provides instructions and information regarding the sign.

The bid package must include all LCDBG-related provisions and the general terms and conditions. In addition to the labor standards and equal employment opportunity provisions and documentation, the following provisions for LCDBG assisted projects must be included, as applicable. These are shown in the Contract Documents Guide ([Exhibit D-2](#)). They include the following:

- Bonding and Insurance Requirements
- Conflict of Interest
- Access to Records/Maintenance of Records
- Clean Air/Water
- Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-based Paint Prohibition)
- Flood Insurance, if applicable

The bid package must also include cost and pricing formats. Generally, street, water, and sewer projects will be unit price contracts, while building type contracts will be fixed price. For unit price contracts, the bid specifications should delineate each type of item, estimated quantity, unit price, and total cost.

The [Louisiana Uniform Public Work Bid Form](#) issued by the Division of Administration, Facility Planning and Control in accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of RS 39:121 must be used in the bid package. A copy of the form is included in [Exhibit D-2](#). Any bids received that do not use this form as required must be rejected as being non-responsive.

The bidding process must be in strict compliance with the [Louisiana Revised Statutes, Title 38: Public Contracts, Works and Improvements](#). These statutes are continually being amended, revised, and superseded; therefore, it is the Grantee's responsibility to assure compliance with the most recent and current regulations. There may be differences between the Louisiana State Statutes and the federal CDBG regulations. If this is the case, **use the most stringent requirement.**

Additionally, if the project or any portion thereof, falls within the definition of an "emergency" under Title 38 of the Louisiana Revised Statutes, the Grantee must contact the Office of Community Development immediately. **The Grantee cannot proceed with those emergency provisions unless it has received written approval of such from the Office of Community Development. Failure to receive written approval may result in disallowed costs.**

It is *suggested* that the bid package be reviewed in its entirety by legal counsel to ensure compliance with applicable federal, State, and local laws. All required bid documents are listed on the Table of Contents of the Contract Documents Guide ([Exhibit D-2](#)), and copies of the documents are provided therein.

The final plans, specifications, and cost estimate must be submitted to the Office of Community Development for review. If revisions to the plans, specifications, and/or cost estimate are requested by this office, these documents must be received by OCD-LGA within 30 calendar days or by the deadline for clearance of contract conditions as outlined in the “Authorization to Incur Costs” letter ([Exhibit A-1](#)), whichever is later. Failure to comply with this requirement will result in an assessment of \$250 per working day. The assessment will be deducted from the amount of LCDBG funds allowed for basic engineering services.

If revisions are submitted in a timely manner but do not adequately comply with the revisions requested, the penalty may be assessed at the State’s discretion.

Following this office's review of the plans and specifications, and if all other program requirements have been met, the Grantee will receive a letter authorizing it to advertise for bids. Bids must be solicited within thirty days of the date of that letter by public advertisement in accordance with the Louisiana Public Bid Law, and a copy of the publicized bid advertisement, including the publication date, must be submitted to the Office of Community Development. A sample Advertisement for Bids is included in the Contract Documents Guide, ([Exhibit D-2](#)).

Failure to comply with the thirty-day bid advertisement requirement will result in an assessment of \$250 per working day. The assessment will be deducted from the amount of LCDBG funds allowed for basic engineering services. If the Grantee is not using LCDBG funds to pay for basic engineering services, the penalty will be deducted from the construction line item in the contract and disallowed. If the failure to advertise for bids within the required timeframe is the fault of another party (the local government or the administrative consultant), then the penalty will be assessed accordingly. If there are extenuating circumstances which prevent publication of the advertisement for bids within the thirty-day period, the local government must advise this office of such prior to the end of the thirty-day period and request an extension of time. The State reserves the right to grant an extension when the reasons for not meeting the timeframe are valid.

The Public Bid Law requires the following:

[Louisiana Public Bid Law](#)

- The advertisement for any contract for public works must be published once a week for three different weeks in a newspaper in the locality, and the first advertisement must appear at least 25 days before the opening of bids for construction projects.
- For materials purchases, the advertisement must be published two times in a newspaper in the locality, and the first advertisement must appear at least 15 days before the opening of bids.
- Plans and specifications must be available to bidders on the day of the first advertisement and must be available until 24 hours before the bid opening date.
- The advertisement must call the bidders’ attention to the conditions of employment and requirements of federal prevailing wage rates, Segregated Facilities, Section 3, and Equal Opportunity, and Buy America requirements.
- The advertisements must not be published on Saturdays, Sundays, or a legal holiday.
- Parishes with a population exceeding 20,000 and city or municipality with a population exceeding 10,000 shall provide a uniform and secure electronic interactive system for the submittal of bids.

The Public Bid Law states that if bid documents are amended during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents. Additionally, it states that no public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays. If the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids, then the opening of bids must be extended for at least 7 days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum must state the revised time and date for the opening of bids.

A copy of each addendum must be submitted to the Office of Community Development at the time the addendum is issued, including any addendum that solely pertains to federal wage rate decisions.

All bids received prior to the opening of bids must remain sealed and kept in a safe place until the bid opening. At the date and time scheduled, the public bid opening should be conducted. The bids must be read aloud during bid opening, and the apparent low bidder should be determined during the bid opening. However, the bids must also be reviewed for both technical and legal responsiveness. In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required.

Pursuant to [LRS 38:2227](#), public entities are required to obtain an attestation regarding past criminal convictions, if any, from each bidding entity responding to advertisements and letting for bids for public works contracts. Also, pursuant to [LRS 38:2212.10](#), all bidders and contractors performing physical services with public entities must be registered and participate in a status verification system to verify that all employees in the state are legal citizens of the United States, or are legal aliens. In addition, bidders and contractors must certify that they are not being assessed penalties regarding unpaid worker's compensation insurance, as per [LRS 23:1726](#).

The bidder/contractor must sign an attestation that they are complying with these laws, and that all subcontractors will comply with these laws. Refer to [Exhibit D-2](#), for the Past Criminal Convictions of Bidders, Verification of Employees, and Certification Regarding Unpaid Worker's Compensation Insurance form. The attestation form from each bidder must be included in each bid document.

Minutes of the bid opening, along with a tabulation of bids and a roster of attendees, must be placed in the contract file. Refer to [Exhibit D-20](#) (Sample Minutes of Bid Opening and Bid Tabulation). Reminder: A copy of the Bid Tabulation form must be submitted to this office as discussed in [Section B: Labor Compliance](#).

After the bid opening, the Grantee must take action within 45 days to either award a contract to the lowest responsible bidder or to reject all bids. The Grantee and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days. Please refer to [LRS 38:2215](#) for any exceptions. A public entity may reject any and all bids for just cause. For more information about "just cause", see [LRS 38:2214\(B\)](#). Also, a contract cannot be awarded with an incorrect federal wage decision. The proper choice of the federal wage decision must be verified as per the process described in [Section B: Labor Compliance](#).

PROCEDURES FOR WHEN BIDS EXCEED COST ESTIMATES

In some cases, the lowest bid received will exceed the amount of funds allocated for the project. Several options are available and are discussed below. **The local government, the consultant, and/or the engineer must contact the Office of Community Development for consultation before exercising any of the options.**

- Reject all bids received - the engineer/architect will then revise the plans and/or specifications in an effort to lower the cost of the project. It is imperative that the Office of Community Development's engineer be consulted as to any proposed changes to the plans and/or specifications. A revised set of plans and specifications and an updated cost estimate may be required to be submitted to the Office of Community Development for review and approval prior to re-advertising the project.
- Make up the difference between the available funds and the amount of the lowest bid through the reallocation of LCDBG funds. If the reallocation of LCDBG funds is involved, contact the Office of Community Development for approval, PRIOR to awarding a contract.
- Make up the difference between the available funds and the amount of the lowest bid with other sources of funding, such as local funds.
- Enter into a contract with the low bidder for the amount of the bid and subsequently, execute change orders to bring the cost of the project within the allocated funds. The Grantee must retabulate bids to determine how exercising this option would affect the other bidders prior to awarding a contract. All change orders must be approved by the Office of Community Development before execution by the local government official.

If it is anticipated that bids received may be higher than the amount of funds budgeted, deductive or additive alternate bids should be included in the bid documents. Drawings must clearly show what is being considered as an alternate. The requirements of the Louisiana Public Bid Law regarding alternates as found in [R.S. 38:2212J](#) are repeated here for convenience:

“(J) Bidding documents shall include no more than three alternates. An alternate bid by any name is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity shall reserve the right to accept alternates in any order which does not affect determination of the low bidder.

AWARDING A CONTRACT

Contracts must be awarded to the “lowest responsible bidder” in accordance with the Louisiana Public Bid Law. Discretion has been given to public entities to determine bidder responsibility. A Court decision has concluded that, in determining bidder responsibility, the public entity may look to financial ability, skill, integrity, business judgment, experience, reputation, quality of previous work on contracts, and other similar factors bearing on the bidder's ability to successfully perform the contract. If the Grantee proposes to disqualify a bidder on the grounds that the bidder is not a “responsible bidder”, it must (1) give written notice of the proposed disqualification to the bidder and include in the notice all reasons for the proposed disqualification, and (2) give the bidder the opportunity to be heard at an informal hearing at which the bidder is afforded the opportunity to refute the reasons for the disqualification.

As described in [Section B: Labor Compliance](#), the successful bidder must be cleared by the Office of Community Development (see [Exhibit B-4](#)). Once the bidder is accepted and a contract has been awarded, the Grantee must send a Notice of Contract Award ([Exhibit B-6](#)) to the Office of Community Development's Labor Compliance Officer within 30 days. One copy of the **certified and itemized bid tabulation** shall be submitted to the Office of Community Development's engineer along with the Notice of Contract Award.

Following award of the contract, the contract documents and applicable bonding and insurance requirements must be completed and executed. **Contract documents include all items contained in the bid package as well as the executed contract, bid proposal, contractor certifications, and bonding and insurance forms.**

The bonding/surety company or companies used by the contractor must be on the U. S. Department of Treasury's Bureau of Fiscal Services list of certified companies. The list is updated annually and can be found online. Grantees can also contact the bureau by phone at (304) 480-6635, or via email at surety.bonds@fiscal.treasury.gov. Verification of the status of surety or insurance companies must be carried out by the Grantee, and the date and method of verification must be clearly documented in the files.

[US Department of Treasury Bureau of Fiscal Services List of Certified Companies](#)

The Grantee must also contact the Louisiana Insurance Commissioner's Office to determine whether the surety company selling the bond is currently licensed to do business in Louisiana. A form which can be used to document the phone calls is provided as [Exhibit D-21](#), Verification of Contractor's Bonding/Insurance. If the status of the company(s) was checked via the internet websites, a copy of the information located at the websites will be sufficient verification.

[Louisiana Department of Insurance – Surety Bond Requirements](#)

The Grantee is reminded of its responsibility to comply with the *Louisiana Public Bid Law* and to seek guidance from its legal counsel concerning such compliance. The Grantee must notify the OCD-LGA Labor Compliance Officer of the date that construction will begin.

NOTIFYING CONTRACTORS OF RESPONSIBILITIES

A pre-construction conference must be accomplished immediately upon contract execution to inform the prime contractor(s) of their responsibilities. These responsibilities include labor standards (covered in [Section B: Labor Compliance](#)), Equal Opportunity (covered in this section below), other state and local provisions, and technical job requirements. Others who must be made aware of these responsibilities are the foreman or construction superintendent, the payroll preparer, and all subcontractors identified in the bid.

At this time, any equal opportunity omitted items such as Section 3 Assurances, Workforce Reports, etc., that have not been submitted by prime contractors and subcontractors should be corrected.

Carefully explain contractor and subcontractor responsibilities regarding equal opportunity using the list of commonly asked equal opportunity questions ([Exhibit D-22](#)) as a guide. Also, requirements for equal employment opportunity monitoring during site visits should be explained.

Any subcontractors **not** identified in the bid must provide the data necessary to verify eligibility, sign required certifications, provide signed Section 3 Assurances, etc. All contractor/subcontractor responsibilities must be complete prior to the start of construction.

ISSUING A NOTICE TO PROCEED

After execution of the contract documents and notification to the contractor(s) and subcontractor(s) of their responsibilities, a **Notice to Proceed** must be issued to each prime contractor. The notice should state the construction start date and the scheduled completion date. Do not submit a copy of the Notice to Proceed to this office.

CONSTRUCTION CONTRACT RECORDKEEPING

The contract file and associated compliance files should be reviewed by the Grantee to ensure all documentation is complete. The following is a list of construction contract file requirements:

- Preliminary design and cost estimates;
- Final design documents and cost estimates;
- Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;
- Bid documents;
- Documentation of submittal to and approval of plans and specifications by the cognizant state/federal agency having jurisdiction over the project;
- Certification of Compliance with Architectural Barriers Act, if applicable;
- Proof of publication/copy of advertisement for bids;
- Minutes of public bid opening;
- Tabulation of bids;
- Recommendation for award;
- Notice of contract award;
- Executed contract document;
- Certification of insurance/bonding;
- Notice to Proceed;
- Documentation verifying prime contractor and all subcontractors have an active Unique Entity Identifier (UEI), and
- Evidence of project sign requirements as shown in [Exhibit D-19](#).