



# Financial Management Series

## Quick Guide to Federal Procurement Requirements

### Introduction

As a recipient of funding administered by the U.S. Department of Housing and Urban Development (HUD), you are subject to a wide range of federal requirements. One of those is generally referred to as procurement. Procurement means the purchase of goods or services. This includes everything from office supplies to professional services and major construction projects. In short, any time you are purchasing goods or services with federal funds, you must comply with federal procurement rules.

The “Uniform Administrative Requirements, Cost Principles and Audit Requirements” regulations are issued by the U.S. Office of Management and Budget (OMB) under 2 CFR Part 200 of the Code of Federal Regulations. The OMB requirements include a section dealing with “Procurement Standards” starting at 2 CFR 200.317. These are the federal rules that must be followed if you are a “non-federal entity” as defined at 2 CFR 200.69 of those regulations.

It is important to note that many states and localities have additional procurement requirements. For example, some local governments have rules that are more stringent than federal regulations. That is permissible. However, if local rules are less stringent than federal requirements, the federal rules must be followed. Given the wide range of local options, we encourage all recipients to consult with their local procurement sources to be sure they comply with all requirements.

### Applicability

As noted above, federal procurement rules apply to all federal grant recipients unless specifically exempted or modified by HUD. This applies to all entities that receive funding directly from HUD as well as subrecipients (e.g., nonprofits) and other governmental agencies that carry out program activities on behalf of direct recipients. Exceptions are made for private contractors and developers that were selected competitively because they are normally profit motivated.

Regardless of the amount of federal funds to be used, federal procurement rules apply. The purpose is to assure that recipients receive the maximum possible “bang for the buck” by using free and open competition whenever possible. As we will discuss later, federal rules provide several acceptable procurement options designed to fit specific situations. Recipients are encouraged to utilize these options to streamline the process while assuring free and open competition.



## Procurement Options

OMB provides for the following five basic options:



Each of these options is designed for a specific circumstance. It is important that you understand all options and when they can be used. The final option, non-competitive proposals, is normally used only when the other four options are not feasible.

### Micro-Purchases

This approach can be used for very small purchases. Currently, OMB limits micro-purchases to procurement of \$10,000 or less. Micro-purchases are most often used for office supplies, small equipment, and other minor expenditures. It is important to understand that, regardless of the procurement option that is used, recipients should determine cost reasonableness in advance by the most effective means possible. That could be as simple as comparing costs through a variety of sources or reviewing previous purchases for similar circumstances. However, with micro-purchases, formal bids or quotes are not required.

### Small Purchases

Small purchases are currently capped at \$250,000 under OMB rules. Small purchases normally include a variety of price quotes (not formal bids) from at least three vendors. Often this is as simple as reviewing posted prices in local ads or on-line or contacting vendors to ask them for their prices. Regardless of the approach, you should document the files to show the method used and how cost reasonableness was established.

### Sealed Bids

This is the option that most people think of when they are awarding major construction contracts. In such cases, projects are advertised in a local newspaper of general circulation. Bids are taken by a specific cut-off date and reviewed through an open, competitive process. Recipients are strongly encouraged to provide adequate response time so that competitors can fully develop bids that are in keeping with all the requirements of the proposed project. Recipients should open, review, analyze and select bids in an open process. Records should be kept including the project description, advertisement for bids, bid packages received, selection criteria and explanation for final selection.

Recipients must award the contract to the “lowest responsive and responsible bidder” [see 2 CFR 200.320(c)(iv)]. In some cases, the lowest bidder might be a contractor that fails to address key selection criteria or one that has an unacceptable history of performance or lacks adequate resources to deliver the required services in a timely or effective manner. Such bidders can be rejected as being less than responsive or responsible. In such cases, you should fully document the file to show the reasons for rejection.



## Competitive Proposals

This option is most often used to procure professional services. It is often referred to as a Request for Proposals (RFP) or Request for Qualifications (RFQ) approach. Examples of covered professional services include legal, engineering, architectural, planning, and other consulting services. In these cases, costs can and should be a factor, but they are not necessarily the controlling factor. As with competitive sealed bids, there should be public advertisement, review of responses, selection criteria and an explanation for the final selection. Award should go to the entity that best meets the overall selection criteria.

## Non-Competitive Proposals

As noted earlier, this approach is normally only used when other options fail. Because this option is non-competitive, recipients are often monitored and/or audited for compliance. It is imperative that your files clearly demonstrate why this approach was used. The OMB rules allow for non-competitive proposals in the following circumstances:

- Item is available from only one source (i.e., sole source)
- Public exigency or emergency requires expedited process
- Grantor agency (HUD) authorizes this in advance (e.g., Presidentially declared disaster)
- Competitive approach was used but inadequate responses were received

## GSA Resources

The U.S. General Services Administration (GSA) provides useful procurement options on their web site. This includes contractors that have been procured by federal agencies as well as small contractors [Section 8(A) firms]. You can go to the GSA web site and search under the Central Contractor Registration (CCR) heading to see if a vendor can meet your needs.

## Minority Business Enterprise/Women-Owned Enterprise/Section 3

Recipients of federal funds are subject to several requirements that are related to the procurement process. This includes Minority Business Enterprise (MBE), Women-Owned Business Enterprise (WBE) and Section 3 project area hiring. Recipients are required to take affirmative steps to reach out to such business in their federal programs. There are several resources on the HUD Exchange (see Resources section for link) that provide detailed guidance and suggestions on ways to meet these statutory requirements. We encourage all recipients to review these materials and to develop local plans to meet these requirements. In addition, HUD requires recipients to report annually on their MBE, WBE and Section 3 performance. For that reason, records must be maintained to show all procurement actions, how MBE, WBE and Section 3 were a factor in the process and the results obtained.

## Contract Cost and Pricing

One of the underlying factors in federal procurement policy relates to “cost reasonableness.” In short, how can you determine if project costs are fair and reasonable? As noted above, competition is one way to do this. The better the competition the more likely you will receive the best value. Regardless of the procurement option used, it is important to make and document in advance a cost estimate. In some cases, you or others have purchased similar goods or services recently through a competitive process. That can be the basis for your



independent cost estimate. In other cases, you might need to rely on outside experts to give you their best estimate of costs. In all cases, estimates should be done in advance and documented in the project file.

Some recipients have used a “cost plus a percentage of cost” (cost-plus) approach to contracting, especially for large construction contracts. Cost-plus contracts are prohibited by OMB requirements. The underlying concern is that contractors could be rewarded by unnecessarily escalating project costs.

### **Other Related Contracting Considerations**

In addition to the above procurement rules and options, there are several related contracting issues that must be addressed to assure adequate performance and protection of the recipient including the following:

- Bonding for construction contracts that exceed small purchase limit (currently \$250,000)
- Bid guarantees for 5% of bid price
- Performance bond for 100% of contract price
- Payment bond for 100% of contract price

### **Program Compliance Monitoring**

Most recipients work with other entities to carry out their programs. This can include subrecipients and other governmental agencies as well as for-profit contractors and developers. It is important to understand that subrecipients and other governmental agencies are subject to the same general rules as the direct grant recipient. This includes federal procurement requirements. To assure that these rules are met, the recipient must monitor third parties. Monitoring can be done on site, remotely or both. We recommend using the [HUD Community Planning and Development Monitoring Handbook](#) (Handbook 6509.2) to assist with such reviews. The handbook provides detailed guidance regarding the entire monitoring process including performing a risk analysis, preparation for reviews, conducting reviews, identifying findings and concerns, writing monitoring letters and resolving deficiencies. In addition, there are dozens of useful monitoring exhibits that can guide you through procurement reviews as well as more general program concerns.

As with all other aspects of your federal program, you must maintain records that are adequate to demonstrate compliance with all federal requirements. This includes compliance with federal procurement rules, both externally (e.g., subrecipients, other governmental agencies, contractors, developers, etc.) and internally (self-review). All records related to compliance monitoring should be maintained and made available for review by outside monitors and auditors.

### **Key Reminders**

To meet federal procurement requirements, you must understand and follow all rules, especially the OMB requirements starting at 2 CFR 200.317. You should periodically check the OMB web site to determine if changes have been made to those rules, especially the dollar limits for each procurement method. You should perform and document an independent cost estimate before each procurement action. It is also important to check any potential contract awardees against the federal “Excluded Parties List” on the Government Accountability Office (GAO) web site to be sure the contractor is not prevented from participating in any federal program. Finally, recipients normally comply with federal procurement rules, but they sometimes fail to maintain adequate documentation to demonstrate compliance. Document! Document! Document!



## Resources

The above resources, references and citations can be obtained through the HUD Exchange website. This is your one-stop shop for information regarding HUD programs.

<https://www.hudexchange.info/>