

PROCUREMENT

Regulatory/Statutory Citations: Section 104 of the Act, 2 CFR 200.320

If the City's CDBG-DR funds are used to pay for a product or service in whole or in part, the procurement procedures in this chapter must apply. All procurements, regardless of dollar amount, must be conducted to provide open and free competition. Before entering into any agreements to purchase equipment or materials, or professional services, compliance must be verified with the federal procurement requirements.

A. Policy: General Procurement Standards

Regulatory/Statutory Citations: 2 CFR 200.318

Full and open competition: All procurement transactions should be conducted in a manner that provides full and open competition. Bids must be solicited by mail, e-mail, posting to the *Grants, Programs and Disaster Recovery* page on the City's website, and public notices in large circulation daily newspapers, large regional papers, and/or special trade publications.

Procurement procedures will avoid any provisions that would restrict or eliminate competition. Some of the situations considered to be restrictive of competition include:

- Placing unreasonable requirements on firms in order for them to qualify;
- Requiring unnecessary experience and excessive bonding;
- Specifying a "brand name" product instead of allowing an equal product to be offered; and
- Any arbitrary action in the procurement process.

Procurement procedures are designed to permit the City to:

- Either consolidate or break-out procurements to obtain the best pricing;
- Permit the City to lease rather than purchase when a determination is made that leasing is more cost effective; and
- Prevent the City from making duplicative or unnecessary purchases

1. Preparing a Request for Proposals (RFP) or a Request for Qualifications (RFQ).

An RFP or RFQ is a written announcement that invites Vendors to compete for the provision of services. The RFP should include:

- The name of the City;
- A brief description of the project including location, purpose, time frame, and present status;
- The entire project scope;
- The time frame for performing the work, including any major milestones or deadlines involved;

- Concise language, containing all the important information needed for the firms to respond in a factual manner;
- A description of any unique problems involved in the project and any previous studies that would be available for bidders' reviews;
- A general description of the scope of the services to be provided by the consultant;
- A demonstration of the consultant's knowledge and experience using details of how they would approach the problem and the alternatives that should be considered;
- The amount budgeted for the proposed scope of service; knowledge of the available budget will help the consultant to fit the proposal to the financial resources available;
- The method of payment to be used;
- Information required of each respondent in order to make the selection, including consultant qualifications, related experience on similar projects, current and projected workloads, capability to meet time and budget requirements, references and the identity of and qualifications of professional personnel to be assigned to the project;
- A list of prior clients should always be requested, including their name, description of the work performed, address, and the name and phone number of a person to contact. A list of their most recent projects should also be required
- The methods and criteria to be used in evaluating the proposals, and the relative weight of each of the criteria;
- The name and telephone number of a local person who can be contacted for further information regarding the RFP; and
- Directions for submitting a response to the RFP. The directions for submitting the RFP should specify the date and time of the submittal deadline and the number of copies required. Since proposals are sometimes hand-delivered, an office address where someone will be available to accept them should be included.

a) VDR 01: Exhibit D: Byrd Amendment Certification

Exhibit D: Byrd Amendment Certification

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature	
Printed Name	
Position	
Date	

b) VDR 02: Exhibit E: Debarment Certification

Exhibit E: Certification Regarding Debarment, Suspension, and Other Responsibility Matters

In accordance with 2 CFR Part 2424 and 24 CFR Parts 5, 6, et al (US Department of Housing and Urban Development: Implementation of 2 CFR 200 Guidance on Debarment and Suspension; Final Rule) the Respondent certifies, to the best of his or her knowledge and belief, that:

No employee of the Respondent who will materially participate in the Respondent's delivery of labor or work product under this RFP is currently suspended or debarred under the applicable laws or regulations in effect on the date of certification;

No sub-contractor, partner or other party who will materially participate in the Respondent's delivery of labor or work product under this RFP is currently suspended or debarred under the applicable laws or regulations in effect on the date of certification.

The undersigned Respondent shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature	
Printed Name	
Position	
Date	

2. Contracting with small, women-owned, and/or minority-owned firms.

The City will take affirmative steps to ensure that Section 3, women-owned, and/or minority-owned firms are given a fair chance to participate in the procurement; including:

- Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises;
- Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises;
- Encourage contracting with consortiums of small businesses, minority-owned firms, and women's business enterprises when a contract is too large for one of these firms to handle individually; and
- Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.

a) VDR 03A: Certification as a Minority Owned, Women Owned or Section 3 Business

I, _____ certify that _____ is a Minority Owned, Women Owned or Section 3 Business.

Business Registered Name	
Business Registered Address 1	
Business Registered Address 2	
State of Registration	
Certificate or Registration Number	
Certifying Agency	

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The City reserves the right to withdraw or terminate the proposed contract should the representation of fact be false.

Signature	
Printed Name	
Position	
Date	

b) VDR 03B: Statement of Intent to Utilize a MOB/WOB or Section 3 Business

I, _____ certify that _____ will utilize Minority Owned Business (MOB) or Women Owned Business (WOB) as subcontractor(s), vendor(s), supplier(s), or professional service(s). The estimated **dollar value** of the amount that we plan to pay the MOB or WOB subcontractor(s), vendor(s), supplier(s), or professional service(s) is \$ _____

Description of Work	MOB Amount	WOB Amount	Section 3 Amount	Name of MOB/WOB/Section 3

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The City reserves the right to withdraw or terminate the proposed contract should the representation of fact be false

Signature	
Printed Name	
Position	
Date	

4. Soliciting proposals

- RFPs and RFQs should be advertised at least twice in the local newspaper used for legal notifications. This does not mean that the entire text of the RFP must be included in a legal advertisement, but that the advertisement should briefly announce that the City is requesting proposals and that a copy of the detailed RFP is available at a given website location or upon request.
- Copies of the RFP will be sent to firms that have previously indicated an interest in submitting a proposal.
- Bidders should be given at least four weeks to respond.

5. Procurement Reviews.

- An evaluation committee of three to five people will be established to review the responses to the Sealed Bid or RFP/RFQ (“bid responses”);
- The committee will be provided with a Bid Tabulation form (CDBG-DR 09) (Page 99) completed by the CDBG-A
- Members of the evaluation committee will be familiar with the solicitation and the work to be accomplished through the contract;
- The analysis of lease and purchase alternatives must be undertaken to determine which would be the most economical and practical procurement;
- The evaluation committee should use no more than 45 days between the proposal deadline, evaluation of the proposals, and the final selection of the Vendor;
- The evaluation committee may interview more than one of the firms that submitted bid responses before making a selection in order to demonstrate that adequate competition took place;
- The evaluation committee may interview the finalists separately:
- Standard questions will be asked during the interview to allow comparison of the bid responses. The same questions should be asked of each firm.
- A record of the scoring or evaluation of proposals made under any form of procurement procedure must be maintained, including:
 - A record of the basis for contractor selection;
 - A record of the basis for award (e.g., best value, price, or technical superiority).

- A written justification for lack of competition when competitive bids or offers are not obtained; including:
 - Evidence of outreach and solicitation; and
 - A statement of barriers to free and open competition encountered (e.g., limited pool of contractors)
- After ranking the responses in order of their scores on the evaluation factors, the committee will make their recommendation to the City.
- City staff will check the references of the Vendor or Vendors;
- City staff will check for debarment by the State or Federal government;
- City Staff will complete a Price/Cost analysis for any non-sealed bid procurement;
- City staff will notify the winning bidder and all other bidders of the result.

a) CDBG-DR 09: Bid Tabulation Form

RECORDED BY: _____

BID # (INSERT BID NUMBER)

(INSERT PROJECT NAME)

Open: (INSERT DATE OF BID OPENING).

	(CONTRACTOR NAME)	(CONTRACTOR NAME)	(CONTRACTOR NAME)	(CONTRACTOR NAME)
Base Bid	.00	.00	.00	.00
Add Alternate #1	.00	.00	.00	.00
Add Alternate #2	.00	.00	.00	.00
Grand Total	.00	.00	.00	.00
<u>Exhibit C</u>				
Non-Collusion Affidavit	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)
<u>Exhibit D</u>				
Certificate Regarding Lobbying	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)
<u>Exhibit E</u>				
Certification Re: Debarment, Suspension and Other Resp. Matters	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)
<u>Exhibit F</u>				
MOB/WOB/Section 3 Business (If Applicable)	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)
<u>Exhibit G Form A</u>				
Form 4400	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)
<u>Exhibit G Form B</u>				
Form 4400	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)
<u>Exhibit H</u>				
Conflict of Interest Certification	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)	(INSERT YES OR NO)

Bid Bond	(INSERT YES OR NO)			
Proof of Insurance	(INSERT YES OR NO)			
W-9	(INSERT YES OR NO)			
Electronic Copy	(INSERT YES OR NO)			

6. Price/Cost Analysis

Regulatory/Statutory Citations: 2 CFR 200.323, Subpart E-Cost Principles.

In accordance with 2 CFR 200.323, when a procurement will not be by sealed bid, the City staff will:

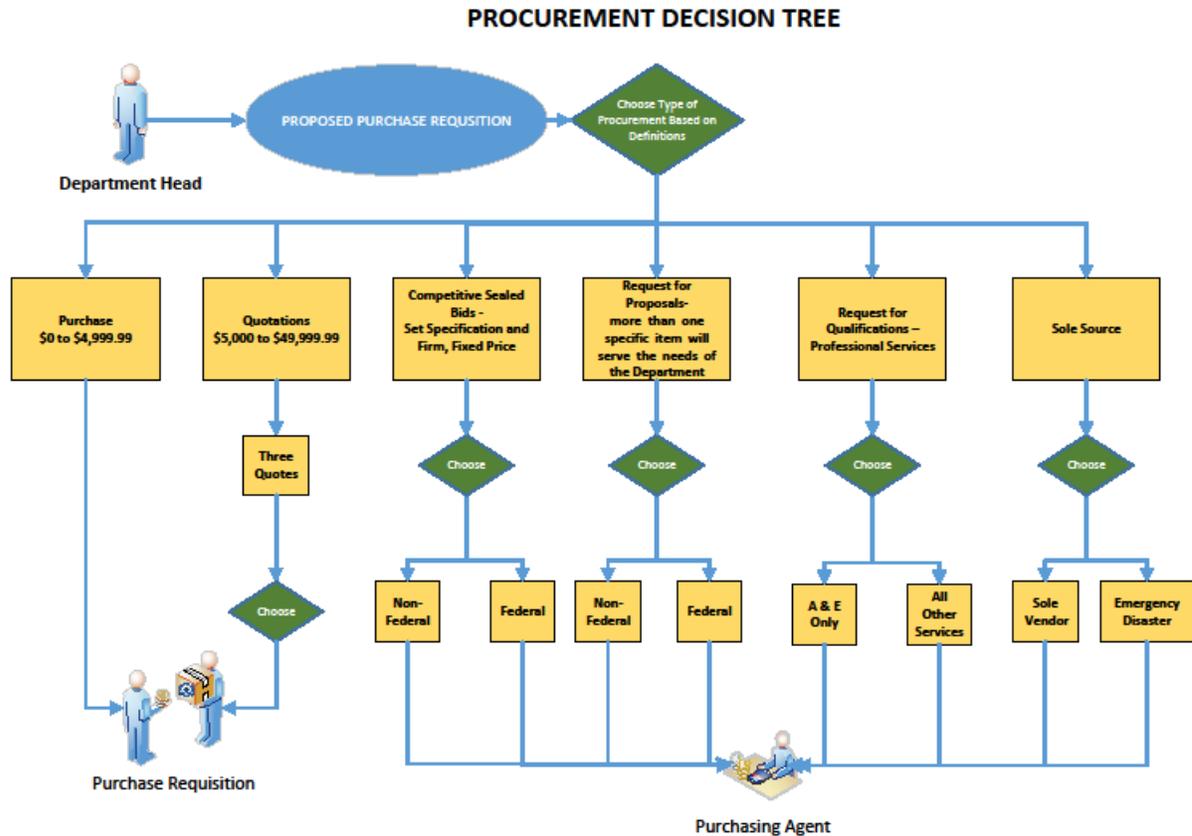
- Make an independent estimate of the cost of the item or items to be procured before receiving bids or proposals. (CDBG-DR 06) (Page 244)
- The City staff will perform a cost or price analysis in connection with every procurement action in excess of \$50,000, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.
- In the event a price/cost analysis fails to meet the requirements of cost reasonableness as defined herein, the City will negotiate with the contractor and when negotiations have been completed, the City will complete or contract for a separate price/cost analysis. This procedure may be repeated until the City is satisfied the requirements have been met.
- In the event a second price/cost analysis fails to resolve the cost reasonableness requirements, the City will engage an independent third party to perform a third price/cost analysis.
- For each contract in which there is no price competition and, in all cases, where cost analysis is performed, the City will negotiate profit as a separate element of the price. To establish a fair and reasonable profit the City will give consideration to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the comparable geographical area for similar work.
 - Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City under 2 CFR 200.323: *Subpart E-Cost Principles.*
 - The City may reference its own cost principles that comply with the Federal cost

8. Contract Negotiation

- Negotiation with the selected bidder will include the scope of services, timetable, contract cost, and payment terms;
- If the contract is for construction, the applicable wage rate decision number must be included in the contract.
- The City requires those key individuals who are identified in the firm's proposal be utilized for the specific tasks the individuals were tied to;
- Only identified key individuals are permitted to charge their time and expenses to the job;
- Clerical and support staff whose costs were not specified in the consultant's original proposal will not charge their time and expenses to the job;
- All commitments stated in the contract must be honored unless changes are approved in writing.

B. Methods of Procurement.

1. Procurement Decision Tree.



Any one of the following methods is deemed appropriate based upon need and the nature of the services required.

2. Purchase

For securing services and supplies that do not cost more than \$4,999 in the aggregate.

- A minimum of two qualified sources shall be solicited by phone or e-mail.
- The City shall accept the lowest qualified quotation.

3. Small Purchase

For securing services and supplies that cost between \$5,000 and \$49,999 in the aggregate.

- A minimum of three qualified sources shall provide written quotations;
- The City shall accept the lowest qualified quotation.

4. Procurement by Sealed Bid

Bids are publicly solicited and a firm fixed-price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest price. The sealed bid method is the preferred method for procuring construction services when the following conditions exist:

- A complete, adequate, and realistic specification or purchase description is available;
- Three or more responsible suppliers are willing and able to compete effectively for the business;
- The procurement lends itself to a firm fixed-price contract (a specified price to be paid when the items or services are delivered); and
- Selection of the successful bidder can appropriately be made principally on the basis of price.

5. Procurement by Competitive Proposals

This method of procurement is generally used when conditions are not appropriate for the use of sealed bids.

- The method for soliciting competitive proposals is the publication of a Request for Proposal (RFP) or the publication of a Request for Qualifications (RFQ). A RFQ is the appropriate procurement procedure for retaining professional services.
- The City may elect to utilize an RFQ/RFP procurement, whereby the RFQ portion determines qualification, and the RFP portion determines selection
- When only one response is received from a competitive solicitation:
 - The procurement process will be reviewed to determine whether it was unduly restrictive or tailored to a particular contractor or supplier;
 - The Department Head requesting the procurement must demonstrate that a reasonable effort has been made to assure maximum open and free competition and that its procurement procedures did not have the effect of unnecessarily restricting competition.

6. Procurement by Noncompetitive Proposals

This is procurement through solicitation of a proposal from only one source or, after solicitation of a number of sources, competition is determined to be inadequate. Such procurements will be used only when the award of a contract is unfeasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:

- The items or services required are only available from a single source;
- After solicitation from a number of sources, competition is determined to be inadequate, and the City Manager authorizes the noncompetitive method; or
- A public emergency exists such that the urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods;
 - Single source procurement must be limited to a one-year non-renewable contract.