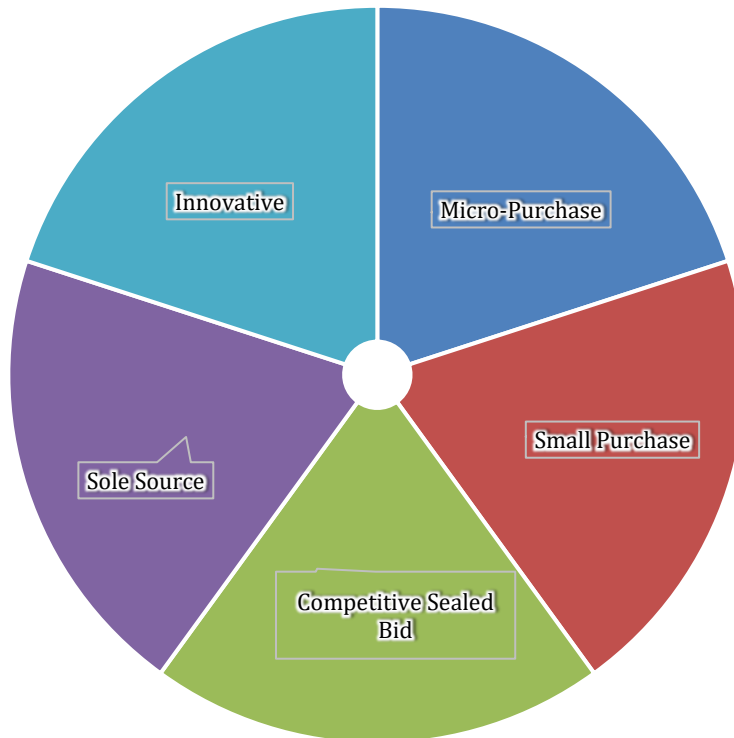


GRANTS MANAGEMENT GUIDE

PROCUREMENT



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Procurement

The procurement of goods and services, such as buying supplies, retaining design professionals and awarding construction contracts on VCDP projects is subject to the requirements of Procurement Standards of the federal Uniform Guidance, specifically [2 CFR part 200.318](#). **Exception: Procurement regulations do not apply to individual homeowners. However, all grantees must be able to demonstrate that the costs are reasonable.**

Municipalities doing their own procurement with CDBG grant funds must follow procurement procedures and standards equal to or exceeding those explained under Agency Procedures, Chapter 10. If you have questions about the applicability of those standards, contact your CD Specialist.

Key Elements of Procurement

The key element of procurement is that the entire process should provide for full and open competition. In order to meet this standard, you should:

- establish reasonable qualification requirements;
- establish reasonable levels of bonding and experience;
- establish competitive pricing between firms or affiliated companies;
- confirm that any consultants on retainer were hired through a competitive process;
- establish written procurement selection procedures.

Choosing the Best Method of Procurement

The appropriate procurement method for any given product or service depends on:

- the estimated cost or price of the goods or services required;
- whether the procurement is for a service or product
- type of contract to be utilized (i.e. general contractor, contract manager, etc);
- whether the service or product is unique; and
- whether there is any eligible, qualified competition for the product or service.

Procurement Options

The principal procurement methods are:

1. **Micro-Purchase Procedures** -- Purchases of goods and services that cost up to \$10,000 may be awarded without soliciting competitive quotations provided that

the Grantee considers the price to be reasonable and such purchases are distributed equitably among qualified suppliers. For construction contracts subject to Davis Bacon wage rate requirements, the Micro-Purchase Procedures threshold is \$2,000.

2. **Small Purchase Procedures** -- Small purchase procurement procedures may be used for securing goods or services that cost up to \$250,000. When small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. This generally requires getting quotes from at least 3 qualified sources. If fewer than 3 quotes are obtained, the Grantee must document that 3 potential sources are not available.

If you have any questions about using the Small Purchase Procedures, do not hesitate to contact Grants Management staff to discuss.

3. **Sealed Bids** – Sealed bids received in response to a publicly advertised request for proposals (RFP) or request for quotes (RFQ) may be used for any size contract. The resulting contract, for a firm fixed price, is awarded to responsible bidder whose bid, conforming with all the material terms and conditions of the RFP or RFQ, offers the lowest price.

The sealed bid method is the preferred method for procuring construction, if the following conditions are present:

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

If sealed bids are used, the following requirements apply:

- the invitation for bids must :
 - be publicly advertised;
 - Public notice regarding the solicitation of bids. The opportunity to bid for the proposed work must be broadly publicized. At a minimum, such solicitation should include advertising in a local newspaper of record broadly circulated throughout Vermont at least 15 days before the bid due date. Other methods of solicitation include but are not limited to electronic bulletin boards, direct mailings to potential vendors or vendors on a prequalified list, or publication in trade journals.
 - be solicited from an adequate number of known suppliers;
 - provide bidders sufficient time prior to the date set for opening the bids to prepare their bids;

- How much time is “sufficient” depends on the complexity of the project and the bid, but generally you should allow at least two weeks between the time the RFP is posted and when bids are due.
 - include any specifications and pertinent attachments;
 - define the goods or services in sufficient detail for the bidders to be able to properly respond; and
 - indicate that in the event all bids received are over the amount budgeted the Grantee and/or Subgrantee/Borrower (Developer) reserves the right to conduct value engineering with the lowest most qualified bidder.
- all bids shall be publicly opened by at least two staff persons of the contracting grantee or subgrantee at the time and place prescribed in the invitation for bids;
- a firm fixed price contract award shall be made in writing to the lowest responsive and responsible bidder.
 - Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining the lowest bid. Payment discounts shall be considered only when prior experience indicates that such discounts are realistically able to be used.
 - A bidder is not considered “responsible” if they do not demonstrate that they have the experience and the personnel to complete the project successfully. In this regard, you should consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources
- Any or all bids may be rejected, in which case a written explanation must be maintained in grantee or subgrantee’s project file.

4. **Competitive proposals** -- Competitive proposals may be useful in appropriate cases for procurements of goods, services and construction activities, including construction management services.

You may want to use procurement by competitive proposals rather than sealed bids if:

- the level of expertise of potential contractors is particularly important; or
- there are significant choices to be made in how to fulfill the contract.

If procurement by competitive proposals is used, the following requirements apply:

- requests for proposals shall be publicized (see sealed bid for direction on this requirement) and shall identify all evaluation factors and their relative importance. Any clarifications concerning a publicized request for proposal shall be promptly communicated to all known potential bidders;
- proposals shall be solicited from two or more qualified sources;

- grantees and subgrantees must have a written and transparent method for conducting technical evaluations of the proposals received and for selecting awardees;
 - an award shall be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
5. **Sole source procurement** -- also known as procurement by noncompetitive proposals, is procurement through solicitation of only one source, or, after soliciting a number of sources, competition is determined inadequate. Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances is present:
- the item or service is available only from a single source;
 - the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - the Agency authorizes the use of procurement by noncompetitive proposals; or
 - after solicitation of a number of sources, competition is determined inadequate.

Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required and is especially important for sole source contracts.

Regardless of the procurement method selected, you must document the following:

- the rationale for the method of procurement;
- justification of contract type;
- basis for contractor selection/rejection;
- basis for cost or price;
- definition of evaluation criteria; and
- proper allocations of costs related to procurement and staffing which will be charged to the VCDP (includes preparing and maintaining time sheets).

The minutes of meetings that describe these items will be adequate. They must be signed by at least two individuals and dated. You must also maintain employment

data which identifies the municipal work forces and staff complement by race, sex, age, national origin, handicap and familial status.

Make sure that the following steps are included in your procurement process:

- proper Equal Opportunity clauses in Request for Proposals (RFP's) and Request for Quotes (RFQ) and ads for personnel;
- proper procurement methods followed in all contract and personnel hires;
- opportunities provided for minority, women-owned and local small businesses and Section-3 businesses¹ in meeting your procurement needs.

All VCDP-funded projects must be accessible to all members of the public and all activities (administration, consulting, and construction) must be nondiscriminatory in design, application, and performance. You are required to ensure this by:

- verifying that the prime contractor and subcontractors are not listed on the HUD debarment list: www.sam.gov
- making sure that a prime contractor has been certified and registered with the Vermont Secretary of State's Office: <https://bizfilings.vermont.gov/online/BusinessInquire/>
- verifying that the prime contractor and subcontractor are not listed on the State debarment list: <http://bgs.vermont.gov/purchasing-contracting/debarment>
- including written nondiscriminatory federal policy provisions in contracts (certifying to affirmative action-Equal Employment Opportunity); and
- documenting outreach efforts to solicit disadvantaged, minority, women-owned, and local business enterprises through newspaper advertisements, (e.g. Dodge Reports, Works in Progress, and VCDP supplied listings).

Using the Same Design Professionals for Both Planning and Implementation Phases

If you are satisfied with the qualifications and performance of the consultant(s) who provided facilities planning or design services for the project and want to retain them for services during construction, you may do so without further public notice and evaluation of qualifications provided:

¹ https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3brochure

- the initial RFP or RFQ clearly stated the possibility that the firm or individual selected for planning might be awarded an agreement to provide services during construction;
- you attest that the original selection process was conducted in accordance with the appropriate procurement process;
- no more than three years have passed since the date of formal notification of selection.

The following entities may be contacted to secure names of businesses that are listed as women-owned, minority and local small businesses:

<p>Vermont Agency of Transportation 1 National Life Drive Montpelier, VT 05633-5001 Tel: (802) 828-2717 http://apps.vtrans.vermont.gov/dberegistry/dberegistry.aspx</p>
<p>AGC of Vermont PO Box 750 1 Graves Street, Unit C Montpelier, VT 05601 Telephone – (802) 223-2374</p>
<p>Vermont Works for Women 32A Malletts Bay Ave. Winooski, VT 05404 Tel: (802)655-8900 Toll Free: 800-639-1472</p>
<p>U.S. Small Business Administration 87 State Street Room 205 Montpelier, VT Tel: (802) 828-4422</p>

Note: In the event all bids received are over the amount budgeted the Grantee and/or Subgrantee/Borrower (Developer) reserves the right to conduct value engineering with the lowest and most qualified bidder.

Further details on procurement procedures appear under Agency Procedures, Chapter 10.

Contracts

Now that the necessary goods and services have been properly procured, you will need to develop the legal documents necessary to establish contractual obligations and rights. There must be written contracts for all purchases with CDBG grant funds except small purchases under \$1,000. Expenditures for administrative services, materials and construction require contracts. As with all contractual obligations, you are advised to seek the advice of legal counsel concerning the rights, duties, obligations and liabilities arising from these legal arrangements.

Minimum Requirements

All contracts and written agreements must contain the following minimum requirements:

1. correct names of the parties to the contract;
2. method of compensation, including a fixed price and the basis for payment which specifies what must be done before payment will be made;
3. specific scope of services, including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance, and specification of materials;
4. effective date of the contract and specific length of time over which the contract is to be performed;
5. geographic location of contract performance;
6. basis for termination, default or cancellation;
7. how disputes are to be resolved;
8. provision for amendments;
9. reference to the Grant Agreement number and its activities under which the funds are being paid with provisions binding the contractors to the terms of the Grant Agreement;
10. contract representatives of grantee, contractor, subcontractor(s);
11. there are four federal pass through requirements:

- a) Procurement Procedures;
- b) equal opportunity;
- c) retention of and access to records; and
- d) Audit Requirements, where applicable;

The required language for these pass-through requirements can be found in Attachment D Sections VII, X, XII and XIV of the Grant Agreement. See the Grants Management Guide Chapter “The Grant Agreement”.

You can incorporate the required federal pass through provisions into your contract by inserting the language directly into the contract; citing the Grant Agreement by number and attaching it to the contract as an appendix; or citing the Grant Agreement sections by number and incorporating the Grant Agreement by reference.

12. Signatures.

Other Information

It is essential that the contract be consistent with the requirements of the Grant Agreement, since that is the “master” contract. Pay particular attention to the terms and conditions concerning the scope of the project, implementation schedules, and budgeted amounts.

Contracts may also need items such as employment agreements, schedules of payments, reporting requirements, etc. For contracts over \$2,000, you must report contracts awarded as described in the Progress Report.

Attachment A of your Grant Agreement will direct you as to when you must provide copies of contracts or loan agreements to the Department for review and approval. Failure to do so will delay the VCDP’s reimbursement/disbursement of funds.

UEI Numbers, SAMS registration, and Debarment

All parties that will receive CDBG funds, including contractors, must have a Unique Entity Identifier (UEI) number. They also must all register with the System for Award Management (SAM) at www.sam.gov. If you need assistance registering with sam.gov please reach out to Vermont APEX Accelerator at (802) 828-5237 or email ACCD.APEXinfo@vermont.gov.

Verify all parties that receive CDBG fund, including contractors are not on the Exclusions list on www.sam.gov. The State's debarment list is at: <http://bgs.vermont.gov/purchasing-contracting/debarment>. These steps must all be complete and documented prior to signing the contract.

These two requirements confirm that the party has not been debarred from receiving federal funds. Additionally, they may not be on the State's debarment list.

Construction Contracts

The construction phase of your project consists of four major components:

- development of the bid document, including plans and specifications, cost estimates, and deductive alternatives, and determination of the prime contractor;
- development and execution of the construction contract;
- conduct of the pre-construction conference and the start of construction; and
- ensuring labor compliance during the course of construction.

The construction contract will include all items that are in the bid package, along with the standard contract terms and conditions, bid proposal, contractor certifications, and bond and insurance forms. Pay careful attention to both the body of the contract as well as the compliance requirements which are frequently included as exhibits to the base contract. Please refer to the Department's [Construction Contract Attachment](#), which includes all the required pass-through provisions.

Specific items which must be covered in any construction contract funded through the VCDP are:

1. citation of Grant Agreement by number, clauses that relate to Attachment A of the Grant Agreement (Scope of Work to be Performed and Special Conditions) and

Attachment B of the Grant Agreement (Payment Provisions and Project Budget) that affect the construction contract;

2. clauses that contain information which specifically delineates who is responsible for accomplishing each specific construction activity, including but not limited to, securing rights of way, easements, and all necessary permits;
3. clauses which specifically deal with insurance and bonding, including but not limited to bid bonds, performance bonds, payment bonds, Worker's Compensation, contractor liability insurance; all bonds and insurances must be in the proper amounts; (information on Construction Bonding is in Agency Procedures, Chapter 11);
4. clauses dealing with any unique construction requirements, such as, materials' storage and removal, traffic control, work hours, protection of property, etc.;
5. clauses to ensure the pass-through requirements of the VCDP to primary contractor and subcontractor: access to records, conflict of interest, Audit Requirements, and equal employment opportunity, to the extent to which they apply;
6. clauses relating to release of liens by contractor or subcontractor;
7. clauses which specify the relationship of primary contractor to subcontractor and who is responsible for which activities;
8. Labor Standards requirements which include a copy of an official wage determination and reference to all Davis-Bacon requirements including Copeland Anti-Kickback Provisions and provisions of the Contract Work Hours and Safety Standards Act;
9. complete names, titles and addresses of all parties and the complete Federal Identification Number (FID) or social security numbers of the contractor(s);
10. specific dates of performance (start and completion);
11. fixed amount of payment;
12. definition of what constitutes substantial completion and final completion;
13. method and schedule of payment;
14. clause requiring complete documentation of requests for payment from the primary contractor and the subcontractors;

15. method by which change orders are to be accomplished and stating that they must be reduced to writing and signed by all parties prior to work being done;
16. provision for written notice to proceed with work and to stop work;
17. progress reporting requirements;
18. clauses relating to monitoring activities and responsibilities of the owner and prime contractor in carrying them out;
19. provisions for termination, default, cure (if applicable), arbitration of disputes and power to resolve; and
20. retainage or contingency to be held.