



**Community Housing Office
Clark County, Nevada**

Subrecipient Guidelines for Federal Funding



Procurement Policies and Procedures

Revised December 23, 2024

Contents

1. Purpose.....	3
2. Written Procurement Procedures	3
3. Written Code of Conduct.....	3
4. Records of Procurement History.....	4
5. Competition.....	4
6. Debarment and Suspension.....	4
7. Contracting with Small, Minority, Women’s Businesses.....	5
8. Other Procurement Standards.....	6
9. Methods of Procurement.....	6
10. Scope of Work for Bids or Proposals.....	11
11. Cost and Price Analysis.....	11
12. Contract Modifications and Change Orders.....	12
13. Contract Administration.....	12
14. Contract Provisions.....	12

Appendices

- Appendix A: 2 CFR 200.318-322
- Appendix B: Clark County CHO Subrecipient Checklist
- Appendix C: Change Order Procedures
- Appendix D: Rules for Construction Projects with Non-Profit Organizations/Agencies
- Appendix E: OIG Integrity Bulletin for Procurement and Contracting
- Appendix F: Procurement Acknowledgement-No Conflict

Clark County CHO (Community Housing Office), Nevada

Subrecipient Guidelines for Federal Funding

Procurement Policies and Procedures

1. Purpose of these procurement guidelines. These guidelines are designed to support subrecipient compliance with Title 2 Code of Federal Regulations (CFR) 200.318 to 326 (Procurement Standards) with two focus areas:

- Non-Federal entity procedures for the procurement of supplies and other expendable property, equipment, real property and other services; and
- Record keeping requirements.

A copy of the code is attached to this guide as **Appendix A**. These guidelines are meant as general guidance only and do not represent a full interpretation of 2 CFR 200. Subrecipients should become familiar with 2 CFR 200 to support their compliance with all Federal regulations. These guidelines are subject to being updated, as needed, by the staff of Community Housing Office (CHO). Subrecipient is required to review, complete and return **Appendix B**, along with their required **written procurement procedures/code of conduct**, to CC CHO staff **prior to execution of the grant agreement**. **Appendix C** outlines change order procedures.

The Appendices of this guide also include **Appendix D**-Rules for Construction Projects with Non-Profit Organizations/Agencies and **Appendix E**-OIG Integrity Bulletin for Procurement and Contracting. Appendix D reiterates the rules for construction projects and due diligence by subrecipients who engage contractors and subcontractors in Federally funded work. Appendix E is general guidance provided by the Office of Inspector General (OIG) for Procurement and Contracting and should be taken under advisement by all subrecipients. Appendix F is a no conflict statement that needs to be completed and returned to CC-CHO if A&E and/or Construction Management services were not procured in accordance with 2 CFR 200.

2. Written procurement procedures. (2 CFR 200.318) All Non-Federal entities, including subrecipients, who receive Federal awards are required to use their own documented procurement procedures which reflect applicable state and local laws, provided that the procurements conform to applicable Federal law and the standards identified in 2 CFR 200.318 to 326.

The 2 CFR 200 guidance herein may be applied by any subrecipient of Clark County administered Federal awards if that subrecipient's procurement policies do not comply with 2 CFR 200. A checklist for subrecipients is included with these procedures as **Appendix B** and **should be completed and submitted to Clark County by the subrecipient** to confirm an understanding that the subrecipient will use procedures that are compliant with 2 CFR 200, as indicated on the list.

3. Written code of conduct. (2 CFR 200.318) The Non-Federal entity, including any subrecipients, must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent shall 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 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 the firm selected for a contract.

4. Records of procurement history. (2 CFR 200.318) The Non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. Additional records required for each procurement type are outlined under the procurement type in **Section 9-Methods of Procurement**. Please note that all subrecipients are required to keep these records and make them available for review to Clark County or Federal staff upon request. Provide CHO staff with a draft of the **public advertisement** for approval, prior to publishing, for all contractor and/or professional services such as Architect/Engineering (A&E) or Construction Management solicitations.

5. Competition. (2 CFR 200.319) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The non-Federal entity (subrecipient) shall be alert to **organizational conflicts of interest** as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitation for bids and/or requests for proposals must be **excluded** from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is **responsive** to the solicitation and is **most advantageous** to the non-Federal entity. Price, quality and other factors shall be considered. If the low bidder is not selected, justification must be documented. Examples for not selecting the low bidder may be that the bid was incomplete (non-responsive); the contractor had been debarred or did not have the appropriate licensing, bonding and/or insurance; another bidder qualified for a Section 3 bidding preference, etc. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the non-Federal entity. Any and all bids or offers may be rejected when it is in the non-Federal entity's interest to do so. In all procurement, the non-Federal entity shall avoid practices that are restrictive of competition. These include but are not limited to:

- (a) Placing **unreasonable requirements** on firms for them to qualify to do business,
- (b) Requiring **unnecessary experience** and **excessive bonding**,
- (c) **Noncompetitive pricing practices** between firms or between **affiliated companies**,
- (d) Noncompetitive awards to consultants that are on **retainer contracts**,
- (e) Organizational **conflicts of interest**,
- (f) 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, and
- (g) Any **arbitrary action** in the procurement process.

6. Debarment and Suspension (Part I in Appendix II of 2 CFR 200) No contract shall be made to parties listed on the SAM.Gov website as having active "exclusions" (Debarment and/or Suspension).

Only the Prime/General Contractor is required to be registered on SAM.Gov. However, for all sub and lower tier contractors, subrecipients are required to check and document both the

company names, and the names of company principals, through the SAM.Gov website to ensure they have not been debarred. A record of the search documenting both the company names, and the names of the company principals, is required and must be maintained. Printing a PDF of the Sam.gov search result showing “no exclusions” with a **date the search was conducted** for each **name** will suffice for this requirement. The principal names can be obtained by searching for the company’s contractor’s license on the **Nevada State Contractors Board** website.

7. Contracting with Small and Minority Businesses, Women’s Business Enterprises, Labor Surplus Area Firms, and Veteran Owned Businesses (2 CFR 200.321). Positive efforts shall be made by the non-Federal entity to utilize **small businesses, minority-owned firms, women's business enterprises, and veteran owned businesses**, whenever possible.

- (a) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (b) 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.
- (c) 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.
- (d) Encourage, when practical, 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.
- (e) Use the services and assistance, as appropriate and practical, 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.

8. Other Procurement Standards (2 CFR 300.318) In general, the subrecipient should adhere to the following procurement standards:

- (a) The non-Federal entity should **avoid acquisition of unnecessary or duplicative items**. Consideration should be given to **consolidating** or **breaking out** procurements to obtain a more **economical purchase**.
- (b) Where appropriate, an analysis is made of **lease and purchase alternatives** to determine which would be the most economical and practical procurement.
- (c) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

9. Methods of Procurement. (2 CFR 200.320) Federal guidance defines five methods of procurement: Micro-Purchases, Small Purchases, Sealed Bids, Competitive Proposals and Non-Competitive Proposals. For each type of procurement, the information in the shaded area indicates records that must be maintained in the sub recipient’s files.

(a) **Procurement by micro-purchases.** Federal guidance defines procurement by **micro-purchase** as the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold, currently at **\$10,000** (2 CFR 200.67; increased from \$3K by HUD in 3/2019). This amount is periodically adjusted for inflation. 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. This method of procurement is intended to reduce administrative burdens by enabling non-Federal entities to obtain supplies and services valued at less than \$10,000 without soliciting competitive quotes.

Procurement records required for micro-purchase procurement

1. Rationale for using micro-purchase procedures

(b) **Procurement by small purchase procedures.** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the "**Simplified Acquisition Threshold**" in accordance with 41 U.S.C. 1908 (2 CFR 200.88) (currently set at \$250,000; increased from \$150K by HUD in 3/2019) and where procurement by sealed bid is not required. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources to ensure that the selection process is competitive. Records of these price or rate quotations should be maintained in the project files.

Please note that 2 CFR 200 states that "the sealed bid is the preferred method for procuring construction." Therefore, **the non-Federal entity should carefully evaluate Construction Contracts, even if they are under the Simplified Acquisition Threshold, to determine whether they should be procured by sealed bid.**

Procurement records required for small purchase procedures:

1. Rationale for using small purchase procedures
2. Written criteria of materials or scope of work used to obtain quotes
3. Clearly dated records of price or rate quotations from an adequate number of qualified sources

(c) **Procurement by sealed bids (formal advertising).** Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

- (i) The **sealed bid** method is the **preferred method** for procuring **construction** if the following conditions are present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and

- (C) The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally based on price.
- (ii) If sealed bids are used, the following requirements apply:
- (A) The **invitation for bids** will be **publicly advertised** and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
1. Clark County CHO requires the duration of a sub recipient's **advertisements of an invitation to bid** in local media publications to be a minimum of **1 week**, and a minimum of **2 weeks** from **advertisement to bid opening**;
 2. Examples of **local print advertising venues** include the *Las Vegas Review Journal*, *El Mundo*, *El Tiempo*, etc.;
 3. Plans/specifications are to be made available in **local plans rooms** (Construction Notebook, Dodge Data & Analytics, Sierra Contractors Source, Construction Market Data, etc.);
 4. The advertisement shall state when/where the bid documents will be made available and procedures for obtaining them.
- (B) The **invitation for bids**, which will include any **specifications** and pertinent attachments, shall define the items or services in **sufficient detail** for the bidders to properly and fully respond;
- (C) All bids will be **sealed, dated stamped and publicly opened** at the time and place prescribed in the invitation for bids;
- (D) A **firm fixed-price contract award** will 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 which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (E) Any or all bids may be **rejected** if there is a **sound, documented reason**.
- (iii) Advertisements/Solicitations for bid must state that the project is **federally funded** and therefore subject to Davis-Bacon prevailing wages, Section 3, Affirmative Action/Equal Employment Opportunity and other federal regulations.

Procurement records required for sealed bids:

1. Rationale for using sealed bids
2. An independent cost and price analysis (estimate)
3. Written bid solicitations/advertisements
4. Submitted bids
5. Justification for lack of competition when competitive bids are not obtained for procurements
6. Basis for contractor selection (award cost or price)
7. Contractor selection (award letter)
8. Contract

(d) **Procurement by competitive proposals.** The technique of competitive proposals is normally conducted with more than one source submitting an offer, resulting in the award of either a fixed-price or cost-reimbursement type contract. It is generally used when conditions are not appropriate for the use of sealed bids, micro or small purchase procedures. There are **two types** of **competitive proposals**; requests for proposals (**RFP's**), or Requests for Qualifications (**RFQ's**). If this procurement method is used, the following requirements apply:

- (i) **Requests for proposals (RFP's), or Requests for Qualifications (RFQ's)**, will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (ii) Proposals will be solicited from an adequate number of qualified sources;
- (iii) Awards will be made to the responsible firm whose proposal is most advantageous to the non-Federal entity with price, qualifications and other factors considered (see **Section 8 (c)** for other factors); and
- (v) **RFQ** is the type of competitive proposal used to procure **Professional Services** such as Architectural or Engineering (A/E), Construction Management (CM), etc. The most qualified competitor is selected based on an evaluation of qualifications. Price is not used as a selection factor. This approach may be used only to purchase professional services. Competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to **negotiation of fair and reasonable compensation**. A **scoring matrix** should be developed and made part of the RFQ solicitation to **score, evaluate and document the submittals**. The RFQ cannot be used to procure services other than professional from a firm, even if that firm is a potential source to perform other services.

Procurement records required for competitive proposals:

1. Rationale for using competitive proposal
2. An independent cost and price analysis (estimate) if more than Simplified Acquisition Threshold or if for construction
3. Written bid solicitations for proposal/advertisements
4. Submitted proposals
5. Justification for lack of competition if insufficient number of proposals are obtained for procurements
6. Basis for proposal selection (award cost or price)/factors considered/scoring matrix
7. Contractor selection (award letter)
8. Contract

(e) **Procurement by noncompetitive proposals.** This is procurement through solicitation of a proposal from **only one source**.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is **infeasible** under **micro-purchase or small purchase procedures, sealed bids or competitive proposals AND** one of the following circumstances applies:

- (A) The item is **available only** from a **single source**;
- (B) The **public exigency or emergency** for the requirement will not permit a delay resulting from competitive solicitation;
- (C) The Federal awarding agency or pass-through entity expressly **authorizes** the use of noncompetitive proposals in response to a written request from the non-Federal entity; or
- (D) After solicitation of a number of sources, **competition is determined inadequate**.

(ii) **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** in order to support reasonableness of costs.

Procurement records required for noncompetitive proposals

1. Rationale for using noncompetitive proposal procurement-justification for lack of competition
2. An independent cost and price analysis (estimate) to support reasonableness of cost
3. Scope of work
4. Contract

10. Scope of Work for Bids and Proposals. (2 CFR 200.318) Sub recipients should develop sufficiently detailed scopes of work for bids and proposals to avoid unnecessary change orders by

contractors. Solicitations for goods and services will provide for all the following:

- (a) A clear and accurate **description of the technical requirements** for the material, product or service to be procured. The description should be comprehensive and with sufficient detail that the contractor will not need to submit change orders for items that should have been in the initial scope of work. In competitive procurements, such a **description shall not contain features which unduly restrict competition.**
- (b) Requirements which must be fulfilled, and all other factors to be used in evaluating proposals, are to be submitted in response to solicitations.
- (c) A description, whenever practicable, of **technical requirements** in terms of functions to be performed or performance required, including the **range of acceptable characteristics or minimum acceptable standards.**
- (d) When relevant, the specific features of "**brand name or equal**" descriptions that are to be included in responses submitted to solicitation.
- (e) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- (f) Preference, to the extent practicable and economically feasible, for products and services that **conserve natural resources, protect the environment** and are **energy efficient.**

11. Cost and price analysis. (2 CFR 200.323) Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action, based on guidance for the method of procurement used, as outlined in **Section 9-Methods of Procurement.**

For capital projects that will be procured through a competitive, sealed bid process, it is encouraged that the A/E (lead consultant for the project design) engages the services of a professional, **third-party cost estimator** early in the project design and provide periodic updates through final design to help ensure the project remains within budget parameters. The recipient of federal funds for a capital project must have a **cost estimate for the completed project design.**

The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the non-Federal entity but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "**cost-plus-a-percentage-of- cost**" or "**percentage of construction cost**" **methods of contracting shall not be used.**

See **Section 9-Methods of Procurement** for more information on the type of cost analysis required for each method. Records that show evidence of the appropriate cost analysis should be kept in the procurement files.

12. Contract modifications/change orders. (2 CFR 200.324) All contract modifications or change orders by subrecipients must be documented clearly in the files with cost analysis records or third-party cost estimates, as applicable, and are subject to review by Clark County and/or Federal staff. Please also note that sub recipients should develop initial scopes of work with sufficient detail as to include all aspects of the project requirements and reduce the use of unnecessary change orders. Details regarding **Change Order Procedures** are included as **Appendix C.**

13. Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. The non-Federal entity shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract. Subrecipients will make contract administration files available to Clark County CHO staff for monitoring, as needed.

14. Contract provisions. (2 CFR 200.325 and 2 CFR 200.326-Appendix II) The Non-Federal entity shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts exceeding the Simplified Acquisition Threshold, currently set at \$250,000, shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor **violates or breaches the contract terms**, and provide for such **remedial actions** as may be appropriate.

(b) All contracts exceeding \$10,000 shall contain suitable provisions for **termination** by the non-Federal entity, including how termination shall be affected and the **basis for settlement**. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Professional Services Contracts should include:

- (i) Specific contract period dates;
- (ii) Project milestones;
- (iii) Specification of materials and other services;
- (iv) Provisions for compensation;
- (v) All required federal contract language.
- (vi) If paid from CDBG funds:
 - a. Required to use the RFP/RFQ method of solicitation;
 - b. Three-year period, maximum;
 - c. Sub recipient's contracts should be reviewed and approved by the sub recipient's legal counsel.

(d) For contracts dealing with construction or facility improvements, the non-Federal entity shall comply with all requirements imposed by its funding sources (and the government regulations applicable to those funding sources) regarding construction bid guarantees, performance bonds, and payment bonds. Following are HUD's minimum bonding requirements:

- (i) Bid guarantee-5% of bid price;
- (ii) Performance bond-100% of contract price;
- (iii) Payment bond-100% of contract price;
- (vii) Bonds from companies holding certificates of authority pursuant to 31 CFR part 223.

(e) All negotiated contracts awarded by the sub recipient shall include a provision to the effect that Clark County and/or HUD shall have access to any books, documents,

papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(f) All contracts, including small purchases, awarded by the subrecipient and their contractors where the source of the funds, directly or indirectly, is the federal government, shall contain the procurement provisions from 2 CFR 200.326-Appendix II, as applicable. This document is included in **Appendix A** of these guidelines.

Appendices

- Appendix A: 2 CFR 200.318-322 and Appendix II-Contract Provisions
- Appendix B: Clark County CHO Subrecipient Checklist
- Appendix C: Change Order Procedures
- Appendix D: Rules for Construction Projects with Non-Profit Organizations/Agencies
- Appendix E: OIG Integrity Bulletin for Procurement and Contracting
- Appendix F: Procurement Acknowledgement-No Conflict

Appendix A

Code of Federal Regulations (CFR)

Title 2 - Grants and Agreements

Volume: 1

Date: 2014-01-01

Original Date: 2014-01-01

Title: Section 200.318 - General procurement standards.

Context: Title 2 - Grants and Agreements. Subtitle A - Office of Management and Budget Guidance for Grants and Agreements. CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE. - Reserved. PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS. Subpart D - Post Federal Award Requirements. - Procurement Standards.

§ 200.318 General procurement standards.

(a) The Non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The Non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. 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. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The Non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective

use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The Non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The Non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The Non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The Non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

/ Title 2 - Grants and Agreements / / 2014-01-01

(j)(1) The Non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract mean a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The Non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The Non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The Non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The Non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). 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.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c) (1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will 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 must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The Non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The Non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The Non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The Non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The Non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given 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 surrounding geographical area for similar work.

(c) 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 non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The Non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The Non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The Non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The Non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The Non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The Non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Code of Federal Regulations
Title 2 - Grants and Agreements

Volume: 1

Date: 2014-01-01

Original Date: 2014-01-01

Title: Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Context: Title 2 - Grants and Agreements. Subtitle A - Office of Management and Budget Guidance for Grants and Agreements. CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE. - Reserved. PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

Pt. 200, App. II

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) 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.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including how it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise

entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) 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.

(G) 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).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) 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 governmentwide Excluded Parties List System 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.” The Excluded Parties List System in SAM 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.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has 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.

(K) See § 200.322 Procurement of recovered materials

Appendix B

Clark County Community Housing Office Federal Grant Subrecipient Procurement Policies and Procedures Checklist

As a subrecipient of Federal grant funds, my agency agrees to comply with policies that align with 2 CFR 200 (Uniform Guidance) regulations regarding procurement of goods and services for grant-related activities. By signing below, I acknowledge that I have received from Community Housing Office the *Subrecipient Guidelines for Federal Procurement Policies and Procedures*.

I also acknowledge that my agency:

- Shall maintain **written procurement procedures** and a **code of conduct policy**; and shall adhere to a code of conduct that avoids real or apparent **conflicts of interest**. (2 CFR 200.318)
- Shall conduct procurement transactions in a manner that provides **open and free competition**. (2 CFR 200.319)
- Shall receive CHO staff approval of any draft **public advertisements**, prior to publishing, for all contractor and/or Professional Services such as Architect/Engineering (A&E) and Construction Management (CM) solicitations. (2 CFR 200.318)
- Shall follow Uniform Guidance for procurement by **micro-purchases**, currently at **less than \$10,000**, unless existing procurement procedures specify a lesser amount as the threshold for micro-purchases, at which time shall use the lesser amount. (2 CFR 200.320)
 ___ Please check here if your agency's procurement procedures indicate a lesser threshold amount. Your agency's threshold amount for micro-purchase procedures is: _____.
- Shall follow Uniform Guidance and obtain price quotations from an adequate number of qualified sources for **small purchases (less than \$250,000)** unless existing procurement procedures specify a lesser amount as the threshold for small purchases, at which time shall use the lesser amount. (2 CFR 200.320)
 ___ Please check here if your agency's procurement procedures indicate a lesser threshold amount. Your agency's threshold amount for small purchase procedures is: _____.
- Shall follow Uniform Guidance and solicit **formal bids** for transactions **above the \$250,000** threshold (or for a lesser amount if existing procurement procedures indicate a lesser amount as the threshold for formal bids.) (2 CFR 200.320)
 ___ Please check here if your agency's procurement procedures indicate a lesser threshold amount. Your agency's threshold amount for formal bids is: _____.

- Shall **advertise publicly** for formal bids in local media publications for a minimum of **one (1) week** and allow a **minimum of two (2) weeks** between **advertisement to bid opening**.
- Shall ensure that all prequalified lists of persons, firms or products are current and include qualified sources to **ensure maximum open and free competition**. Shall not preclude potential bidders from qualifying during the solicitation period. (2 CFR 200.319)
- Shall develop **scopes of work** with a clear and accurate description of the technical requirements for the material, product, or service to be procured but shall avoid features which unduly restrict competition. (2 CFR 200.319)
- Shall **avoid** the unnecessary use of **change orders** by developing the initial scope of work in sufficient detail as to identify all the requirements an offeror must fulfill to allow bidders to properly respond to the request for bids. (2 CFR 200.319)
- Shall ensure **bids** are delivered in a **sealed envelope** and **date stamped prior to the bid opening deadline** and are **publicly opened at a time and place prescribed in the invitation for bids**. (2 CFR 200.320)
- Shall employ the technique of **competitive proposals** when appropriate, such as for **Architectural/Engineering or Construction Management services**, and shall publicize and identify all **evaluation factors** in the **RFP** (Request for Proposal) or **RFQ** (Request for Qualifications). (2 CFR 200.320)
- If A&E and/or Construction Management services were established prior to application for Federal funding and are determined “cost reasonable”; complete, sign and return Exhibit F, along with any required documentation, to CC-CHO staff (2 CFR 200.320)
- Shall solicit competitive proposals from an adequate number of qualified sources when this technique is employed. (2 CFR 200.320)
- Shall employ the technique of noncompetitive proposals only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals. (2 CFR 200.320)
- Shall make positive efforts to utilize **small businesses, minority-owned firms, and women’s business enterprises**, whenever possible, and document efforts to do so. (2 CFR 200.321)
- Shall not make contracts with any parties listed on **SAM.gov** as having active **exclusions, debarment or suspension** from Federal funding. (2 CFR 200.213)
- Must retain **date/time stamped records** of **SAM.Gov debarment checks** of all contracting companies and their principals documenting they have not been debarred or suspended; and

ensure the **prime/general contractor registers on the SAM.Gov website.** (2 CFR 200.213)

- Shall obtain and clearly document an appropriate **cost or price analysis** in connection with every procurement action exceeding the Simplified Acquisition Threshold. For contract modifications and change orders, shall adhere to change order policies as outlined in the Procurement Policies and Procedures Guidelines, **Appendix C.** (2 CFR 200.323)
- Shall, as a starting point for all procurement, make **independent cost estimates** before receiving bids and proposals for purchases exceeding the Simplified Acquisition Threshold. (2 CFR 200.323)
- Shall maintain records sufficient to detail the **history of procurement**, including rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. (2 CFR 200.318)
- Shall maintain financial records, supporting documents, statistical records, and all other **records** pertinent to the Federal award and shall retain them for a minimum of **three years** from the date of the submission of the final expenditure report. (2 CFR 200.333)
- Shall add **provisions to all contracts**, as required by Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, if applicable. (2 CFR 200.326)
- Shall include, in its entirety, the current **Davis Bacon Wage Decision** applicable to the project for **all construction contracts** exceeding \$2,000 (2 CFR 200.326)

Authorized signature _____
Date

Title: [Click here to enter text.](#) Agency: [Click here to enter text.](#)

Received by CHO on: _____

Date

Received by: _____

Printed name

Signature

Appendix C

Change Order Policies and Procedures for Subrecipients of Federal HUD Funding Through Clark County, Nevada

The following process for change orders will be used to document adjustments to construction contracts that are funded by federal HUD dollars provided to subrecipients through Clark County's U.S. Department of Housing and Urban Development funding administered through the Community Housing Office of Clark County. These policies and procedures apply to all subrecipients of Clark County federally funded construction projects.

When is a Change Order Required?

An official change order will result from changes regarding the original scope of work, price or schedule agreed upon between the subrecipient and parties involved in construction projects. A change order is a written instrument prepared by an architect and signed by the owner, contractor and architect stating their agreement of a change to the scope of work, timeframe or amount.

How Frequently Should Change Orders Be Used?

Change orders are to be used minimally. The subrecipient will develop complete and well-defined scopes of work for construction projects to limit the need of change orders, thus avoiding overuse of change orders. When a scope of work is developed, the subrecipient will send a copy to staff at the Community Housing Office. When change orders are required, the subrecipient will clearly document and keep records explaining the need for the change order.

How Should Change Orders Undergo A Cost Analysis?

The subrecipient will undertake a cost analysis for every change order. Cost analysis is the review and evaluation of each element of cost to determine reasonableness and applicability. Change order requests are required to show a breakdown between materials, labor and overhead/profit. Cost analysis requires, at a minimum, review and sign off by the construction project architect and the project owner to attest to applicability of the change order to the project and the reasonableness of cost of the change order. The change order will also be reviewed by Clark County CHO staff, as explained in the next section.

How Will Clark County CHO Staff Review the Change Order?

As the lead agency for HUD funding, Clark County must review and sign off on all subrecipient change orders. After the architect has signed off on the change order and prior to implementing the change order, the subrecipient will submit the change order to the Clark County CHO staff for review and sign-off. The subrecipient also will submit a cost analysis documentation and approval letter from the architect. Clark County will provide written sign-off on the change orders in a timely fashion so as to not delay projects.

What Records Must Subrecipients Keep?

The subrecipient will maintain hard copy or digital records of all change orders, including cost analysis and review and approval by subrecipient staff, and will produce those records for monitoring by County or Federal level staff. Clark County CHO will maintain records of sign-off on change orders.

Appendix D

This Appendix applies only to construction projects jointly developed with **Non-Profit Organizations and Agencies (Does not include projects developed in conjunction with Clark County RPM)**.

For projects that receive Federal funding, certain procedures must be followed to comply with applicable **Federal statutes** and **executive orders**. Grantees must also follow applicable State or local laws on procurement, depending on their location. If there are inconsistencies among Federal, State or local laws, the strictest of the requirements applies.

Procurement Manual

Non-Federal entities, e.g. both **Non-Profit** organizations (e.g. Catholic Charities, Nevada Hand, etc.) and **units of local government** (Clark County, North Las Vegas, Mesquite, etc.), are required to have **written** procurement procedures or a **“Procurement Manual”** that clearly outlines purchasing and contracting procedures that comply with Federal Regulations. Among other things, the requirements governing the purchasing process are designed to ensure the following:

- Free and open competitive process in securing products and services
- Proper documentation of activities and decisions
- Comply with special rules for particular kinds of purchases (competitive sealed bids, etc.)
- Proper bonding and insurance
- Use of local businesses and contacting preferences with small, minority and/or women-owned businesses to the maximum extent feasible

These **non-Federal entities** also must maintain **oversight** to ensure that **contractors perform** in accordance with the terms, conditions and specifications of their contracts or purchase orders.

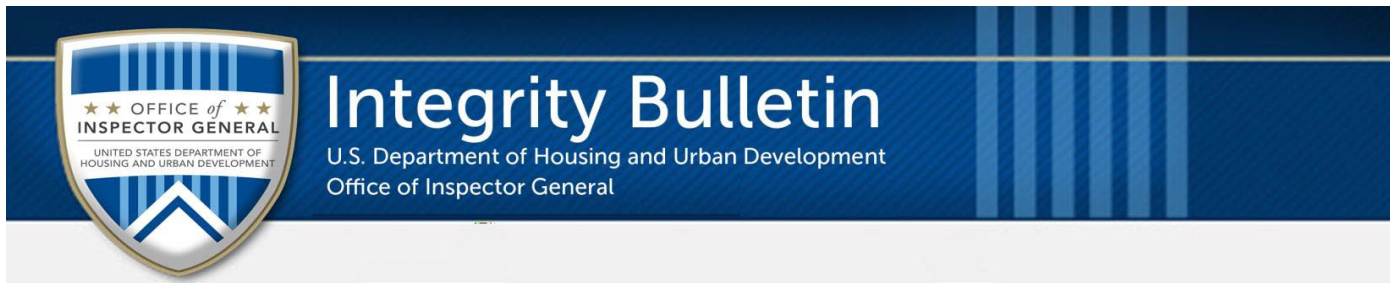
Procurement and Contracting Ground Rules (See Appendix E)

The U.S. Department of Housing and Urban Development **Office of Inspector General** (OIG) published an “Integrity Bulletin” titled **“Procurement & Contracting: Five Ground Rules for Grantees and Subrecipients”**. Federal Grants made after December 14, 2014 are now covered by a new common rule at 2 CFR (Code of Federal Regulations) Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. The five basics that should be in place, as discussed in greater detail in the bulletin, are:

- Maintain Separation of Duties
- Provide Competencies and Training
- Insist on Good Record Keeping
- Maximize Competition
- Uphold Ethics and Bar Conflicts of Interest

Agencies and subrecipients should review this **OIG bulletin** when developing and updating their procurement and contracting procedures. They are also encouraged to review the **Clark County CHO Subrecipient Guidelines for Federal Funding Procurement Policies and Procedures** and to ensure their **Procurement Manual** meet the necessary minimum **Federal compliance requirements**.

Appendix E



“In government contracting, we can’t afford the luxury of mistakes. You must be aware of what is going on and what you can do to protect both the government and yourself.”

– Federal Acquisition Institute

Procurement & Contracting: Five Ground Rules for Grantees and Subrecipients

Purpose

Goods and services must be procured in an effective manner and in compliance with Federal, State, and local laws. These laws exist to ensure that funds are awarded through fair and open competition and are spent on eligible and reasonably priced goods and services. Although the majority of grantees and subrecipients comply with these rules and regulations, we are issuing this bulletin to assist you in identifying potential weaknesses in procurement and contracting procedures. Weak or nonexistent procurement policies and management oversight can entice some employees to manipulate contracts to their personal benefit and can result in costly, wasteful, or unenforceable contracts. However, the very act of monitoring procurements and contracts has a deterrent effect on fraud and poor management and thereby enhances the integrity of the program.

While the information contained in this bulletin does not supersede previously issued guidance currently in effect, it should serve as a useful tool in highlighting important requirements and establishing self-assessments of your procurement and contracting activities.

Background



Federal grants are covered either by a new common rule at 2 CFR (Code of Federal Regulations) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, or the previous version at 24 CFR Parts 84 and 85 (for grants made before December 14, 2014). Grantees are also required to follow applicable State or local laws on procurement, depending on their location. If there are inconsistencies among Federal, State, or local laws, the strictest of the requirements applies.

Although the administrative procedures concerning procurement may vary, there are several major requirements that should be met consistently. While reviewers must concentrate on administrative compliance, they also should be alert to indications of fraud and abuse. When indications of irregularity are uncovered, additional assessment of the situation may be needed. It is prudent for elected officials and executives to be alert to any controversies or complaints regarding these activities and the staff responsible for them.

Ensure That Five Ground Rules Are in Place

A primary duty of elected officials and executives in regard to procurement and contracts is to ensure that policies and procedures are in place and comply with all Federal, State, and local requirements. Ask any business leader what is the greatest challenge in these times, and the most likely answer will be “to manage costs.” Procurement and contracting are key areas in which grantees can control costs. Generally, elected officials approve the procurement policy, and executives are responsible for executing the policy and ensuring that it is followed.

Regardless of whether the executive administers procurement directly, delegates it to other officials or subrecipients, or contracts out the procurement process, the grantee is ultimately responsible. You should ensure that checks and balances are in place to detect and prevent violations of procurement rules and procedures. In other words, internal controls and a quality control system should be in place so you can have assurances that rules are followed. While you must follow all requirements, you will position yourself well for meeting other rules by ensuring that five basics are in place.

1. Maintain Separation of Duties

The most direct way to prevent fraud is to eliminate the opportunity.

The person(s) delegated to do the ordering should be different from the person(s) receiving and accepting the goods and the person(s) paying for the order. When this is not possible due to the limited size of staff or when the process is decentralized, as in the case of an outstationed project manager, additional rules should be used, such as limiting dollar authorizations and periodic reviews by an independent individual. The grantee should ensure that only designated individuals have the authority to make binding contracts. If you have a small staff, you must devise a method for independent oversight. The rule of thumb should be that if an employee touches the money, mail, or goods purchased, he or she should not touch the books.

Example of Inadequate Separation of Duties

- An audit found that all Community Development Block Grant (CDBG)-related mail, including vendor invoices, was opened by a finance director. The director also was responsible for cash receipts and reconciling bank statements. Because this violated the separation of duties principle, the director should have had someone else who didn't have access to the financial records, be responsible for opening and logging in the mail. In addition, bank reconciliations should be done by an employee who is not responsible for cash receipts.

2. Provide Competencies and Training

A best practice for grantees is to have a knowledgeable entity review their procurement policies and procedures to ensure that they meet HUD and Office of Management and Budget requirements. In addition, contracting staff should be sufficiently trained to perform its duties and meet its responsibilities.

Many Federal and State contracting officers have strict training requirements, but these requirements may not always flow down to the local grantee or subrecipient level. Many of the grantee's expenditures go through this process, making it a high-risk area requiring



competent and ethical staff that performs at a high level.

For this reason, it is up to the grantee to ensure that a standard is in place and that anyone hired to conduct procurement activities has appropriate training and experience. The grantee should also provide continuing training in procurement and contracting to ensure that its staff keeps up to date on procurement requirements, such as the new 2 CFR Part 200. Training is available from many State agencies, the National Procurement Institute, the Public Contract Institute, or private firms, but it must be tailored to Federal grant requirements.

Example of Poor Policies or Training

- City councilmembers approved a construction contract for \$782,215 for the rehabilitation of 28 residential streets. A month later, the councilmembers approved a change order that increased the contract from \$782,215 to more than \$2.1 million, which allowed the contractor to perform additional construction work on 16 more residential streets. Regulations required that the city make available preaward review procurement documents, such as proposals or invitations for bids, independent cost estimates, etc., when a proposed contract modification changed the scope of a contract or increased the contract amount by more than \$100,000. Although the city obtained approval from councilmembers for the material change order, there was no documentation to show that it performed a cost or price analysis as required by 24 CFR 85.36(f)(1). This condition occurred because the city had policies and procedures that were separate from its implemented program procedures, which did not consider applicable HUD rules and regulations to ensure proper documentation of its program-funded procurement actions. The grantee should have used the HUD-required procurement rules.

3. Insist on Good Record Keeping



Grantees should ensure that policies and procedures are comprehensive regarding the level of documentation to be maintained on procurements and contracts. While outside parties or subrecipients may conduct the procurements, the grantee is responsible for ensuring that all original records are available and readily accessible for audit or other reviews.

While it is not required, you may want to consider requiring that periodic reports on procurement activities be reviewed by management to ensure transparency and integrity in the process. Reviewing these reports may disclose conflicts of interest or other abuses. Reports to consider obtaining are

- **A spend map**, a periodic plan for what is to be bought. Understand what (and how) you and your subrecipient spend.
- **A contracts register** of vendors, contractors, and subcontractors by date and type of procurement (micropurchases, small purchases, requests for proposals, and sole-source and competitive bids), funding source, and amount of the contract, along with a brief description.
- **A Summary of change orders** by contract.
- A report that **cross-checks** vendor addresses and phone numbers with those of employees.
- A report of any **purchases lacking invoices**.

Examples of Poor Record Keeping

- During an audit, a city did not provide complete file documentation for its procurement and expenditure

transactions, resulting in many requests for missing documents. After the audit fieldwork ended, the city provided more than 18,000 pages of documentation to support its procurements and expenditures. A review comparing the work activity logs, provided as support for payments for a drainage cleaning contractor, to the contractor's invoices found that the work activity logs were not complete. The city will need to work with HUD to review the records and determine whether they support the procurements and costs claimed. The grantees should have ensured that it received and maintained all necessary support. In labor hour contracts, the city needed to ensure that it received signed time and attendance reports and that those reports indicated which hours were for which approved activities.

- An audit of a State found that it did not require its contractor to bill by the detailed tasks listed in its \$144 million CDBG Disaster Recovery-funded contract. Since the State allowed the contractor to bill by position and total hours worked, it could not determine what tasks the contractor had completed or whether it had overpaid the contractor for any task. The State should have required the contractor to bill by task.

4. Maximize Competition

Ensuring that procurements are conducted and contracts are awarded in a way that obtains the most competition will serve the agency well. If you encounter any of the issues listed below, you should dig deeper to ensure that procurements are being made properly:



- Use of sole-source contracts,
- Insufficient price or rate quotes from qualified sources,
- Lack of independent cost estimates or cost analyses,
- A failure to rotate vendors on lower priced purchases,
- The use of unreasonably narrow or specific qualification criteria or bid specifications,
- Short timeframes for responding to offers,
- An insufficient number of responsive bidders,
- Overuse of change orders,
- Failure to check government debarment lists,
- Overuse of small purchase contracts,
- Lack of outreach to women and minority business enterprises, and
- An excessive number of small purchase contracts close to the small purchase dollar limit.

Example of Poor Procurement Practices

- An Authority's procurement process for its HOME Investment Partnerships Program had significant problems. The Authority awarded 27 contracts valued at \$1.8 million to 10 contractors during the audit period. The Authority:
 - Accepted faxed bids in the procurement process for four clients. There were two contracts awarded based on

a faxed bid. The related payments totaling \$114,014 were unsupported. Regulations at 24 CFR 85.36(d)(2)(ii)(C) state that if sealed bids are used, all bids will be publicly opened at the time and place prescribed in the invitation for bids. The grantee's program manual required sealed bids. Executed a contract for services when different sealed bids were submitted on the same day from the same contractor for the same project, which resulted in an unsupported payment of \$8,000. There was no documentation explaining why the bid awarded was greater than the lowest bid submitted. Regulations at 24 CFR 85.36(d)(2)(ii)(D) state that a contract will be awarded to the lowest responsive and responsible bidder.

- Paid contractors before inspection and project completion contrary to the Authority's management plan requirements. The Authority's management plan states that the Authority must ensure that work is inspected before making payment to contractors.
- Did not ensure that the amount of the bid submitted by the contractor equaled the accepted bid amount on the bid summary. The bid form submitted by the contractor listed a bid in both numerical and written form, and the Authority accepted the numerical bid amount. The Authority's bid form states that bid amounts must be stated in both words and figures and that in case of a discrepancy, words will govern.
- Accepted bids for demolition services when the demolition method was not known at the time the bids were received. Since the demolition method was not known, the Authority could not have determined an accurate cost estimate. Regulations at 24 CFR 85.36(f) state that subgrantees must perform a cost or price analysis in connection with every procurement action. Grantees must make independent estimates before receiving bids or proposals. It was determined later that the demolition work was not done on several units, although the grantee paid for the work.

5. Uphold Ethics and Bar Conflicts of Interest

HUD requires that a written code of standards be included in the procurement policy, and many State and local conflict-of-interest laws also have requirements. Ensure that your guiding principles bar those in positions of trust from personally gaining from transactions and that the process is fair to all seeking to do business with the grantee or subrecipients.



A common problem is the lack of understanding of what "appearances of conflicts" entails. Too often, managers believe that indirect or non-cash gifts are not considered a conflict of interest. Examples are vendor or contractor donations to employee fund-raising drives, event tickets, meals, or giveaway gifts like a Thanksgiving turkey or iPad drawing given to an employee-affiliated organization. These gifts could be considered potential conflicts of interest so it's best to be wary of accepting anything of value from a contractor. If you are unsure whether it is legal or creates an appearance of a conflict, seek expert advice.

As a grantee, you have an obligation to not only avoid conflicts of interest yourself, but also to be alert and question real or apparent conflicts by any others, including subrecipients. Conflict-of-interest restrictions also extend to immediate family members, business partners, or organizations where they may be employed or seeking employment.

Ethics also entails maintaining integrity through strong financial controls to avoid embezzlement and theft of assets. During fiscal years 2011 to 2015, the Office of Inspector General (OIG) investigated and obtained 239 convictions of grantee staff members or contractors.

Examples of Ethical Violations

- A grantee, through its subrecipient, administered its CDBG revolving Economic Development Loan programs, including a commercial loan program. A commercial loan of \$200,000 was made at a 2 percent interest rate to relocate several manufacturing businesses into one central location. There was a potential conflict of interest as the loan was made to a local for-profit corporation, the president of which was also on the board of directors of the subrecipient that made and administered the loan on behalf of the city. HUD regulations prohibit participation in the administration of a contract if there is a real or apparent conflict of interest. The grantee should have been aware of and monitor for conflicts of interest between a subrecipient and entities that it supported with grant funds.
- Following an OIG investigation, a former CDBG grant administrator was sentenced to 36 months' probation and ordered to pay restitution to HUD in the amount of \$116,064. Over a 4-year period, the defendant received a salary from a city department as the grant administrator and also formed a company and was its executive director. The defendant awarded several CDBG contracts to this company. He collected a salary from the city as a grant administrator and also collected a salary as the executive director of his company, which was paid using CDBG funds.

In Summary – Stay Alert

Most procurement and contracting problems come to light through complaints, protests, and alertness to unusual circumstances. Be sensitive to any findings on the procurement process by your independent public auditor. Also, be vigilant for any controversies or complaints regarding these activities and the staff members responsible for them. You should understand the types of purchases that are not allowed or exceed needs. Remember, even allowable costs can be disallowed if they are unreasonable or not for an eligible or allowed purpose. While there are many schemes and poor practices in the procurement and contracting areas, following the above basics will give you and your agency an advantage in preventing and detecting fraud and avoiding repayment of funds. If you are in doubt about a situation, don't ignore it. Get advice from your counsel, HUD office, or other experts.

Serious allegations of fraud should be reported to your local HUD Office of Inspector General or to the HUD OIG hotline at <http://www.hudoig.gov/report-fraud>.

Appendix F

Procurement Acknowledgement-No Conflict

Project: _____
Subrecipient: _____
A & E: _____
Const. Manager: _____

Procurement Manual: Subrecipients are required to maintain written procurement procedures and a code of conduct policy that avoids real or apparent conflicts of interest. They can incorporate Clark County CHO's "Subrecipient Guidelines for Federal Funding: Procurement Policies and Procedures" by reference into their written standards to assist in meeting these Federal funding requirements and be compliant with the terms of the grant agreement.

The subrecipient is required to review, complete and return the following:

- **Appendix B** of the CC CHO procurement policies and procedures
- **Appendix F** (this document) acknowledging no conflict of interest with previously contracted Architectural & Engineering (A&E) and/or Construction Management (CM) service providers
- **Written procurement procedures/code of conduct** to CC CHO staff prior to execution of the grant agreement.
- **If required, an explanation of cost reasonableness for previously procured A&E and CM services**

Architectural & Engineering (A&E) and Construction Management (CM): Our Procurement Guidelines cite Federal requirements for procuring RFP's or RFQ's when sealed bids are not appropriate. Subrecipients that are awarded CDBG/Federal funding typically had to retain the services of an Architect and/or Engineer, and/or a Construction Manager, to assist in completing their application. A&E professionals and/or CM's that were used in the creation of the application can be used for an awarded project without undergoing the competitive procurement process if the costs are considered reasonable and there is no conflict of interest.

Such a conflict of interest would arise when the employee, officer, or representative, 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 (e.g the selected A&E professional or CM is a member of the board or related to a key member of the development team, etc.).

Both A&E and CM services must be deemed cost reasonable. The subrecipient is required to provide an explanation of fees attesting to cost reasonableness. CC CHO will review and notify the subrecipient if they agree, or disagree, with the cost reasonableness assessment.

By signing this document, I am acknowledging that no such conflict exists, and CC CHO has been provided with an explanation of cost reasonableness for any previously procured A&E and CM services.

Prime Contractor: Our Procurement Guidelines outline Federal requirements for procuring contractors using a competitive, publicly advertised, sealed bid process under a traditional design/bid/build delivery method. This method is typically used to select the "prime" contractor, who would be contractually obligated to complete the project for their bid amount, assuming their bid is responsive and most advantageous to the subrecipient.

A Construction Manager with intimate knowledge of the project cannot compete with other Prime Contractors in a traditional sealed bid procurement for a "Prime Contract".

Please review the Federal Regulations to ensure compliance with your intended construction delivery method.

Authorized signature
Title: [Click here to enter text.](#) Agency: [Click here to enter text.](#) _____
Date

Received by CHO on: _____
Date

Received by: _____
Printed name Signature

Approved by CHO on: _____
Date

Received by: _____
Printed name Signature