

## Chapter 3 – Procurement

### Words to Know:

**Disadvantaged Business Enterprise/Minority Business Enterprise/Women Business Enterprise** – Businesses where at least 51% of ownership is held by either disadvantaged persons, minorities, or women. Disadvantaged refers to certain groups presumed disadvantaged, including women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and others found to be disadvantaged in the past by the U.S. Small Business Administration. For more information, visit this [website](#).

**Professional services** – Architectural, engineering, and land surveying services.

**RFP** – Request for Proposals.

**RFQ** – Request for Qualifications.

**Section 3** – A provision of the Department of Housing and Urban Development Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that CDBG Grantees, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.

### Overview

All CDBG projects must follow applicable local, state, and federal procurement requirements (namely, 2 CFR Part 200) for the procurement of all goods and services to be paid for in whole, or in part, with CDBG funds. Grantees are encouraged to follow the procurement guidelines described herein.

Requirements for publication of notices for municipalities are set forth in [§7-1-4127, MCA](#). Requirements for publication of notices for counties are set forth in [§7-1-2121, MCA](#). Local government Grantees should be aware that [§18-8-203, MCA](#) – dealing with the procurement of architectural, engineering, and land surveying services – states that units of state and local government must publish a notice of their need for these services. However, because [§18-8-](#)

[203, MCA](#), does not establish a specific timeframe or method of publication it can be read in conjunction with [§7-1-4127](#) and [§7-1-2121, MCA](#), for further guidance regarding publication timeframes.

## General Requirements

### Commerce Review

Grantees are encouraged to submit their solicitations to Commerce for review before publishing. This review allows Commerce to provide Grantees technical assistance, and ensures Grantees have full opportunity to consider all applicable procurement requirements and best practices. If solicitation does not comply with CDBG regulation, Grantees must republish the solicitation. If not, this could become a monitoring finding.

### DBE/MBE/WBE Solicitation

All Grantees must proactively reach out to small and disadvantaged, minority, and women-owned business enterprises. Grantees can access the Disadvantaged Business Enterprise & Small Business Enterprise directory or request quotes from certified Disadvantaged Business Enterprises by accessing the Montana Department of Transportation's [online tools](#). Copies of documentation must be submitted to Commerce. Please see the "Section 3/DBE/MBE/WBE" toolkit available at CMT's [website](#) for more information.

### Section 3 Business Concern Solicitation

Grantees must, to the greatest extent feasible, ensure that economic opportunities are extended to low and very-low-income persons residing in the geographic area where CDBG assistance takes place. All Grantees must publish a Section 3 notice and proactively reach out to Section 3 business concerns when soliciting goods and services. Grantees are encouraged to search for firms that meet one of the regulatory definitions of a Section 3 business. Copies of documentation must be submitted to Commerce. Please see "Section 3/DBE/MBE/WBE" toolkit available at CMT's [website](#) for more information.

## Full and Open Competition

All procurement transactions should be conducted in a manner that provides full and open competition. Procurement procedures should avoid any provisions that would restrict or eliminate competition (such as unreasonable response deadlines, unreasonable requirements, or unnecessary levels of prior experience). It should be noted that multiple services can be combined in one procurement process to reduce costs and save time so long as the procurement allows for “and/or” language to encourage all types of service providers the ability to respond.

When a Grantee receives only one response to a competitive solicitation, the procurement process may be reviewed by Commerce to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the Grantee to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of unnecessarily restricting competition.

## Build America, Buy America

The Build America, Buy America Act or Buy American Preference applies a domestic product purchasing preference for all iron, steel, construction, and manufactured products. BABA affects all CDBG infrastructure projects that are funded with Federal Fiscal Year 2023 and forward funds. While in the process of selecting a contractor for your construction project, the contractor will need to assure the grant administrator that all BABA regulations will be followed. For more information on BABA, you can visit this [website](#). If you have questions about eligibility, or would like to apply for a BABA waiver, please contact your Project Specialist with project specific questions.

## Geographic Preference

Grantees cannot apply statutorily or administratively imposed in-state or local geographic preferences in the evaluation of bids or proposals. However, when contracting for architectural and engineering services, geographic location may be a selection criterion if an

appropriate number of qualified firms, given the nature and size of the project, exist within the area. Requests for proposals or qualifications that include criteria such as “knowledge of the community” or “experience with the community” would restrict the competition and are unacceptable. Notwithstanding, it should be noted that firms must follow all Montana state licensing laws.

## Written Selection Procedures

Grantees should have written selection procedures that incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain features that unduly restrict competition. For example, the description should not detail product specifications; however, it may state the qualitative nature of the material, product, or service to be procured, and when necessary, describe those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Written selection procedures should also identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

## Procurement Methods

The following methods of procurement are allowable for CDBG projects ([2 CFR Part 200.320](#)):

### Micro-Purchase Procedure

Micro-purchase procedures can be used for the acquisition of supplies or services generally no greater than \$10,000; examples include equipment repair. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the Grantee (non-federal entity) considers the price reasonable. Contact Commerce for additional details.

### Small Purchase Procedure

Small purchase procedures can be used in the procurement of services such as grant administration, equipment, supplies, or property when the aggregate cost over the life of the project is less than \$100,000. Grantees must obtain written or oral quotes from at least two qualified sources. The process of obtaining quotes and additional information from sources must be documented to demonstrate that the service, equipment, supplies, or property was

selected appropriately. Documentation should include a record of rates or quotes received, dates of contact, identifying information for all firms (name, address, and phone), questions asked equally and fairly of all firms, and the rationale for selecting a specific firm.

### **Sealed Bid Procedure/Limited Solicitations**

Pursuant to [§ 7-5-4302, MCA](#), when procuring for construction, equipment or supplies over \$100,000, a competitive, sealed bidding process is required, and the contract must be awarded to the lowest responsible bidder. The bid opportunity must be publicly advertised, and bids must be kept confidential until the public bid opening. Grantees should refer to the current applicable provisions of Montana law for advertising requirements when the competitive, sealed bid method is used ([§ 7-1-2121, MCA](#), for county governments and [§ 7-1-4127, MCA](#), for municipalities).

Please refer to the step-by-step guide in Chapter 6 to ensure full compliance with CDBG requirements in the procurement of the prime construction contractor. Grantees must receive an Environmental Release of Funds letter from Commerce before they execute a construction contract with the prime contractor. Ideally, the EROF should be received before being publicly advertised for bid.

The sealed bid method of procurement is used when the following conditions exist:

- A complete, adequate, and realistic specification or purchase description is available
- Two or more responsible suppliers are willing and able to compete effectively
- The procurement lends itself to a firm, fixed-price contract (a specified amount to be paid when items or services are delivered)
- Selection of a successful bidder can appropriately be made principally based on price (award goes to the lowest responsive and responsible bidder)

## **Procurement Method for Architectural, Engineering, and Land Surveying Services**

While Commerce uses the term “professional services” more broadly, [Montana law](#) defines professional services as architectural, engineering, and land surveying services only.

No matter the contract amount, an RFP or RFQ for architectural, engineering, or land surveying services must be publicly advertised in accordance with Montana law ([§ 7-1-2121, MCA](#), for county governments and [§ 7-1-4127, MCA](#), for municipalities).

The following is a step-by-step guide to procurement for architectural, engineering and land surveying services. Example materials are provided in our “Procurement” toolkit on Commerce’s [website](#).

- Decide whether an RFP or a RFQ is appropriate. Use sample RFP/RFQ in “Procurement” toolkit
- Advertise the RFP/RFQ in accordance with local and state requirements, ensuring that Section 3 and DBE language is included. Use sample advertisement provided in “Procurement” toolkit
- Determine a method for scoring submissions and keep documentation of scoring
- Governing body votes on selected firms and documents the vote in meeting minutes
- Contract executed with CDBG supplemental conditions attached

### **Non-Competitive or Sole Source Procedure**

Sole source procurement (also known as “procurement by noncompetitive proposals”) involves soliciting only one source or, after soliciting several sources, determining that only one source is capable of providing the product or service. This type of procurement will rarely be authorized.

This method of procurement requires prior approval by Commerce and is only allowed when at least one of the following conditions exists:

- Sole source procurement is permissible under [Montana law](#)
- The items or services required are available only from one source
- A public emergency exists such that urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods
- After solicitation from several sources, only one source is acceptable or suitable for the supply or service item

Prior to conducting Sole Source procurement, contact Commerce for instructions.

### **Alternative Delivery Method of Procurement**

Sometimes referred to as Design-Build or General Contractor/Construction Management, the Alternate Delivery Method of Procurement is a process where the grantee hires a contractor to provide feedback during the design phase before the start of construction. The procurement process is broken down into two contract phases: the first contract phase (the design phase) allows the contractor to work with the designer and the project owner to identify risks, provide costs projections and refine the project schedule. Once the design phase is complete, the contractor and project owner negotiate on the price for the construction contract. If all parties agree with costs, then the second contract phase (the construction phase) is kicked off and construction begins.

Please contact your project's CDBG Project Specialist prior to conducting the Alternate Delivery Method of Procurement to ensure that CDBG requirements can be met.

### **Contract Preparation**

Before Grantees enter into professional services contracts, they must demonstrate to Commerce that they followed proper procurement procedures. Additionally, Grantees must provide Commerce with information for prospective contractors (such as names, addresses, Unique Entity ID) so Commerce can ensure that contractors are eligible to receive federal awards. To verify that contractors are registered to do business with the federal government and do not have an active exclusion, Commerce references the [System for Award Management](#). To verify state eligibility, Commerce checks the [State of Montana Debarred Vendors list](#) and/or consults directly with the Montana Department of Labor and Industry.

When preparing project contracts, Grantees must ensure inclusion of CDBG supplemental conditions. All contracts must include the scope of services (detailed description of services to be performed and/or products to be provided), timetable, contract cost, and payment terms negotiated by the Grantee and the consultant.

Contracts should allow fair and reasonable profits for consultants. Payments to consultants must be based on either fixed price or cost reimbursement. CDBG cannot reimburse for cost plus a percentage of cost, also known as multipliers. Payment terms for management services contracts can provide for the retainage of a percentage of contract funds (typically about 5%) pending completion of conditional project closeout and the resolution of any monitoring findings which may be related to the contractor's performance. Payment terms for architectural contracts can allow for retainage by holding back some funds until a building has been inspected and approved for building code compliance.

All draft professional service contracts must be submitted to Commerce for review prior to execution.

### **Contract Extension**

If Grantees wish to extend a contract with a consultant, architect, or engineer procured to prepare their CDBG application, they must be able to clearly document that their original procurement process met all applicable requirements and included a scope of services that could extend beyond grant writing at the Grantee's discretion.

### **Documentation**

Grantees will provide information to Commerce about how they intend to procure or did procure grant administration, professional services, and construction services in accordance with the procurement laws applicable to them. Documentation will demonstrate the Grantee's rationale for choosing a specific method of procurement, procurement procedures followed including vendors solicited and advertisements/requests (if applicable), responses received including consultant qualifications, basis for consultant selection or rejection, consultant eligibility (non-debarment and non-exclusion), basis for contract price, and contract



specifications and scope of work. The Grantee's records must show efforts to solicit an adequate number of qualified sources, undergo special outreach (Section 3 and DBE/MBE/WBE as applicable), and provide for full and open competition.

### **Ongoing Review of Contractor Performance**

The Grantee should establish and maintain procedures to monitor contractor performance to ensure adherence to the scope of services, timetable, and any other terms and conditions specified in the contract. Ongoing review of the contractor's performance and progress will prevent problems that may affect the quality, timely completion, or cost of the contract for the project.