CDBG GRANT ADMINISTRATION HANDBOOK

Updated May 2026

Chapter 3 – Procurement

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Table of Contents

PROCUREMENT COMPLIANCE 3
INTRODUCTION 3
GENERAL CDBG PROCUREMENT REQUIREMENTS 3
Environmental Review and Bidding 3
SAM Unique Entity Identifier 3
Excluded Parties 4
Minority/Women/Veteran-Owned Businesses (MBE/WBE/VBE) 4
BUILD AMERICA, BUY AMERICA (BABA) 5
Products Covered Under The BABA Act 5
BABA Applicability on CDBG Projects 6
General Waivers 7
Certifications 7
HUD Project Specific Waivers 8
ECONOMIC OPPORTUNITIES (SECTION 3) 8
Background 8
Applicability 8
Section 3 Benchmarks 9
Definitions 9
Responsibilities 10
Documentation 11
Section 3 Best Practices 12
Qualitative Efforts 12
CONFLICTS OF INTEREST 13
Background 13
Requirements 13
METHODS OF PROCUREMENT 14
Micro Purchase Procedures 14
Small Purchase Procedures 14
Competitive Sealed Bid 14
Competitive Negotiation 15
Non-Competitive Negotiations 17
OTHER PROCUREMENT ISSUES 17
Independent Cost Estimates 17
Over Budget Bids 17

PROCUREMENT OF PROFESSIONAL SERVICES 19
PRE-BIDDING REQUIREMENTS 21
Property Acquisition Issues 21
PROCUREMENT OF CONSTRUCTION SERVICES 22
Step 1: Obtain the Appropriate Wage Decision 22
Step 2: Prepare Invitation for Bid (IFB) 22
Step 3: Submit a copy of all project specifications (bid document only, not a copy of the plans) to the GOED 23
Step 4: Publish Invitation for Bid (IFB) 23
Step 5: Solicit MBE/WBE/VBE Responses 23
Step 6: Confirm Wage Rates 23
Step 7: Issuing Addenda 23
Step 8: Conduct Pre-Bid Meeting 23
Step 9: Receive Bids 24
Step 10: Open Bids 24
Step 11: Make Vendor Selection 24
Step 12: Award the Contract 24
Step 13: Submit Contract Award Report to GOED 24
Step 14: Execute the Contract 25
CONSTRUCTION MANAGER /GUARANTEED MAXIMUM PRICE CONTRACTS 25
Construction Management Fees 25
Guaranteed Maximum Price 26
CONTRACT DEVELOPMENT 27
Bonding Requirements 27
Insurance Requirements 28
Contract Requirements 28
Retainage Requirements 28
PROCUREMENT RECORDKEEPING 29
REVISION HISTORY 30

PROCUREMENT COMPLIANCE

INTRODUCTION

All procurements funded in whole or in part with CDBG funds must comply with the applicable federal requirements found in 2 CFR 200.318-326. The goal in using these procurement procedures is to achieve maximum open and free competition. This section describes the policies and procedures that must be followed when entering into contractual agreements with other entities. Services often procured by grantees to complete CDBG projects include professional grant administrators, engineers, architects, and construction contractors.

Each grantee (and sub-recipient) shall adopt and abide by the CDBG Procurement requirements set forth in this chapter, which shall apply only to procurements funded with CDBG dollars, as authorized in 2 CFR 200.318. The CDBG Procurement requirements include:

A code of conduct to govern the performance of the grantee's officers, employees or agents in contracting with CDBG funds and to ensure adherence to the Conflict of Interest and disclosure requirements. A sample has been provided by GOED as Attachment G in the CDBG Application document; and

- A requirement that positive efforts be made to use small, minority, female, and Section 3 businesses; and
- A requirement that contracts be awarded, to the greatest extent feasible, to businesses that provide economic opportunities for low and very low-income persons residing in the project area; and
- A requirement that cost reasonableness has been determined in advance of contract bidding, per 2 CFR 200.323(a).

GENERAL CDBG PROCUREMENT REQUIREMENTS

Environmental Review and Bidding

As stated in Chapter 2: Environmental Review, HUD requires that the environmental review process be completed prior to bidding to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review.

SAM Unique Entity Identifier

Each business that receives CDBG assistance must have a Unique Entity Identifier (UEI) generated by SAM.gov.

On **April 4, 2022**, the unique entity identifier used across the federal government changed from the DUNS Number to the Unique Entity ID.

- The Unique Entity ID is a 12-character alphanumeric ID assigned to an entity by SAM.gov.
- As part of this transition, the DUNS Number has been removed from SAM.gov.
- Entity registration, searching, and data entry in SAM.gov now require use of the new Unique Entity ID.
- Entities already registered in Sam.gov can find their Unique Entity ID by following the steps here.
- Entities who are not registered in Sam.gov can get a Unique Entity ID here.

Sub-recipients, Contractors and Sub-contractors

A sub-recipient, contractor or subcontractor who is registered in SAM.gov has a Unique Entity ID assigned already. No action is necessary to create a Unique Entity ID. The Unique Entity ID must be provided to the prime and Grantee as soon as possible.

A sub-recipient or subcontractor who is **not** a registered entity in SAM.gov, must request a Unique Entity ID as soon as possible. Even if the entity already have a DUNS Number, they will need to request a Unique Entity ID.

Refer to the Guide to Getting a Unique Entity ID and the video Get a Unique Entity ID to get more information on getting a UEI. **Sub-recipients and sub-contractors do not need to complete a full SAM.gov entity registration. If you only conduct certain types of transactions, such as reporting as a sub-awardee, you may not need to complete an entity registration. Your entity may only need a Unique Entity ID (UEI). No SAM.gov entity registration will be required for you to get an ID.**

Excluded Parties

Grantees must not award any contract to any organization that is debarred or suspended or is otherwise excluded from or ineligible for participation in federally assisted programs. This applies to any CDBG-assisted contract at any tier in the process. Documentation proving verification of contractor eligibility will be checked at monitoring.

- Prior to contract execution, the Grantee must check the organizations name against the federal System for Award Management (SAM).
- The Grantee must document that the organization (including all subrecipients, contractors, and subcontractors) are not excluded from participating in federal contracts. For subrecipients , the checks must be completed prior to application to GOED. For other procured services, check must be completed prior to execution of a contract for services. Documentation includes:
    - Screenshots of Active status for SAM.gov registered entities.
    - Screenshots showing entities with SAM.gov issued Unique Entity Identifier (UEI) are not listed as debarred.

The General Services Administration has released a YouTube video with detailed instructions on searching Exclusions on SAM.gov. GOED has provided Form 3-1: Certification Regarding Debarment and Suspension for Grantees use.

Minority/Women/Veteran-Owned Businesses (MBE/WBE/VBE)

Background

The regulations at 2 CFR Part 200.321 requires Grantees to take affirmative action to contract with small businesses, minority businesses, women's business enterprises, veteran-owned businesses. GOED does not require set asides or participation quotas, but Grantees are expected to make special efforts to award contracts to MBE and WBE firms.

Requirements

The Grantee must make good faith efforts to see that Minority/Women/Veteran OwnedBusiness Enterprises are provided opportunities as a result of Small Cities funding. Grantees are expected to solicit MBE/WBE/VBE businesses when utilizing CDBG funds whenever possible. Grantees can find guidance on what qualifies as "good faith effort" on the South Dakota Department of Transportation DBE Good Faith Effort website.

Goals For MBE/WBE/VBE Participation

Contractors on CDBG funded projects must comply with 2 CFR 200.321 and Executive Order 12138. The requirements for contractors under this regulation which concerns utilization of Minority/Women/Veteran OwnedBusiness Enterprises is explained below.

Suggested Outreach

It is the Grantee's job to ensure the MBE/WBE/VBE firms are notified of any contracts ready for bid. Other specific measures a Grantee may take to meet MBE/WBE/VBE goals include:

- Assuring that small businesses and MBE/WBE/VBEs are solicited whenever they are potential sources.
- Including MBE, WBE and VBE firms on solicitation lists and sending them an Invitation to Bid.
- When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBE/VBEs.
- Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBE/VBEs.
- Provide support mechanisms such as webinars and Q&A sessions.
- Require the prime contractor to take the above affirmative steps when procuring subcontracts.
- Setting aside a percentage of CDBG funds to be awarded to MBE/WBE/VBEs.
- Including MBE/WBE/VBE criteria with additional points in selection criteria for professional services procurement.

BUILD AMERICA, BUY AMERICA (BABA)

The Build America, Buy America Act (BABA) requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the "Buy America Preference (BAP)" and the specific requirements are codified in 2 CFR § 184.

Products Covered Under The BABA Act

Iron and Steel: Items that consist completely or predominantly of iron, steel, or a combination of both. "Predominantly" means the cost of the iron and steel content exceeds 50% of the total cost of all the item's components. All manufacturing processes, starting from the initial melting stage and continuing through the application of coatings, must occur in the United States.

Construction Materials: Articles, materials, or supplies used for construction activities that consist of only one of the items described below. For the purposes of the HUD Phased Implementation Waiver timeline described below, construction materials are divided into two categories: specifically listed construction materials and not listed construction materials. Specifically Listed Construction Materials: Items include (1) non-ferrous metals; (2)

lumber; and (3) plastic- and polymer based composite building materials, pipe, and tube. Not Listed Construction Materials: Items include (1) all other plastic- and polymer-based materials (such as polymers used in fiber optic cables), (2) glass, (3) fiber optic cable, (4) optical fiber, (5) engineered wood, and (6) drywall. Construction Material Standards (2 CFR 184.6) All manufacturing processes for the construction material must occur in the United States.

Manufactured Products: Manufactured products include articles, materials, or supplies that have either been: 1. Processed into a specific form or shape, or 2. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. A manufactured product may include components that are construction materials or iron and steel products, unless the manufactured product also meets the definition of iron and steel or construction materials. In such instances, the product should be re-categorized in the appropriate category. Determining the Cost of Components for Manufactured Products (2 CFR 184.5) Manufactured products must meet two production requirements. First, the final product must be manufactured in the United States. Second, at least 55% of the cost of the components making up the manufactured product must be associated with components that were mined, produced, or manufactured in the United States.

BABA Applicability on CDBG Projects

The Buy America Preference references that all infrastructure projects are included, an infrastructure project is defined broadly as any project that includes Construction, Maintenance, Alteration, or Repair (applies even if the primary purpose is not infrastructure).

Examples of CPD-funded activities that may be subject to the BAP:

- Rehabilitation of buildings and real property
- Construction of public facilities and improvements, such as streets, sidewalks, neighborhood centers, and the conversion of buildings for eligible purposes
- Utility installation or improvements
- Water systems (drinking water and wastewater)
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation infrastructure

Examples of CPD-funded activities that may NOT be subject to the BAP:

- Acquisition of real property
- Relocation and demolition
- Public services
- Shelter or public facility operating expenses
- Supportive services
- Short-term payments to prevent homelessness
- Special economic development activities
- Administrative activities
- Disaster and emergency response

General Waivers

HUD issued a public interest waiver for exigent circumstances, "Public Interest Waiver of Build America, Buy America Provisions for Exigent Circumstances as Applied to Certain Recipients of HUD Federal Financial Assistance". This waiver applies when there is an urgent need by a CPD grantee to immediately complete an infrastructure project because of a threat to life, safety, or property of residents and the community. (Effective until November 23, 2027, or such shorter time as HUD may announce via Notice.)

HUD also issued a public interest de minimis, small grants, and minor components waiver titled "Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Certain Recipients of HUD Federal Financial Assistance". This waives the BAP for all infrastructure projects whose total cost (from all funding sources) is equal to or less than the simplified acquisition threshold at 2 CFR 200.1 which is currently $250,000. This Notice also waives the application of the BAP for a de minimis portion of an infrastructure project, meaning a cumulative total of no more than five percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of $1 million. (Effective until November 23, 2027, or such shorter time as HUD may announce via Notice.)

To facilitate a smooth transition to the BAP requirements, HUD established the Phased Implementation Waiver (see Certifications below) for its programs based on the date when funds are obligated to the State. All CDBG Formula Grants and Recovery Housing Program Grants funded in FY 2024 that meet BABA requirements and involve the use of Iron and Steel and Construction materials listed (i.e.(1) non-ferrous metals; (2) lumber; and (3) plastic- and polymer based composite building materials, pipe, and tube). Starting in FY 2025, all projects that meet BABA requirements and involve construction materials not listed and manufactured products will be applicable to BAP.

If it is determined that any additional construction materials are needed that were not included on the itemized cost estimate during the bid submission, then the contractor is required to notify the Grantee.

A Guide to Help Grantees Determine if BABA Applies has been provided as Form 3-2

Certifications

The prime contractor and all subcontractors must comply with the requirements of the BABA Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, as applicable to the Community Development Block Grant (CDBG) and Recovery Housing Program (RHP) infrastructure projects. Pursuant to the U.S. Department of Housing and Urban Development's (HUD's) notice, "Public Interest Phased Implementation Waiver for FY2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

- Language has been added to Form 3-3 CDBG Contract Provisions making compliance with BABA a required contract clause.
- **Form 3-4: Buy America Certification must be completed by the prime contractor and submitted with the bid package.**
- **Form 3-5: Materials Certification must be completed by the prime contractor and submitted with the bid package. If any change are made throughout the project, a change order must be submitted**.

NOTE: If it is determined that the project meets the requirements for a General Waiver, the Grantee must submit written notification to GOED that justifies the decision for the Department's review and approval.

HUD Project Specific Waivers

Project/product-specific waivers are available on a **limited, case-by-case basis,** after GOED and HUD's review, a public comment period, and final approval from the Office of Management and Budget's Made In America Office (MIAO). A waiver should be requested from GOED if an extenuating circumstance occurs that meets one of the following criteria: 1. Public interest: Adhering to the BAP would be inconsistent with the public interest. 2. Non-availability: Covered materials are not produced in the USA in sufficient and reasonably available quantities or of a satisfactory quality. 3. Unreasonable cost: Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25 percent. If more than one Federal agency is funding an infrastructure project, project-specific waivers will require coordination among those Federal agencies prior to a determination by the MIAO. **GOED will only approve waivers to be sent to HUD with substantial documentation meeting the above-listed criteria.**

ECONOMIC OPPORTUNITIES (SECTION 3)

Background

Section 3 of the Housing and Urban Development Act of 1968, as amended, ("Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs be directed to low and very low-income persons. The priority of assistance should be to those who are recipients of government assistance for housing, and business concerns which provide economic opportunities to low and very low-income persons.

The Section 3 program was created to ensure that persons living in communities where HUD-assisted programs were being funded could economically benefit from the resources being spent. This would improve the overall socioeconomic condition of not only the community, but also the low and very low-income residents that reside within the neighborhoods.

The implementing regulation for Section 3 can be found at 24 CFR Part 75.

Applicability

Whenever any portion of CDBG funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 may apply, based on the guidance provided below.

Section 3 applies to all projects that receive $300,000 or more in CDBG, or other HUD assistance, including projects that are financed in conjunction with state, local or private matching or leveraged funds, provided that the Section 3 monetary threshold requirements are met.

In particular:

- Section 3 applies to recipients of CDBG funding, as well as its subrecipients, contractors and sub-contractors; and
- Professional service contract labor hours (construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and construction draw inspection and prevailing wage labor compliance) are not required to be reported. However, if professional services are completed by Section 3 workers their hours can be used to meet established benchmarks
- If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

The regulations should not be construed to mean that recipients are required to hire Section 3 Workers or award contracts to Section 3 Business Concerns other than what is needed to complete covered projects and activities. If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, reporting is still required.

Section 3 Benchmarks

HUD has established Section 3 benchmarks for Section 3 workers and Targeted Section 3 workers through a document published in the Federal Register. Current benchmarks for projects meeting the threshold are:

- 25% of all labor hours are performed by Section 3 Workers
- 5% of all labor hours are performed by Targeted Section 3 Workers

HUD will update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every 3 years.

GOED's Grantees, developers and contractors will be required, to the greatest extent feasible, meet the current benchmarks published by HUD at the time of contract with GOED.

Please ensure you are using the current benchmark when setting up a project.

More information on Section 3 can be found on the HUD Section 3 Program website.

Definitions

Section 3 Worker

HUD defines a Section 3 worker as a worker that meets one of the following requirements:

- The worker's income is below the CDBG income limit for a household of 1 (no matter the worker's household size) established by HUD, based on the workers place of residence.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant

Income Limits are estabablished annually by HUD and can be found on the HUD CDBG Income Limits webpage. Instructions for finding the appropriate income limit is below.

To find the applicable income limit:

1. Go to the income limits webpage (https://www.hudexchange.info/resource/5334/cdbg-income-limits/)
2. Select the most recent posted set of CDBG Income Limits
3. Filter the Excel spreadsheet for South Dakota
4. Find the applicable County or MSA for the project
5. Scroll over to the 80% income limit for 1 person column (Lim80_24p1)

Targeted Section 3 Worker

A Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern; or a Section 3 worker who is:

- Living within the service area or neighborhood of the project; or
- A YouthBuild participant.

If a contractor will hire new employees for the CDBG funded project, Form 3-6 may be used for self-certification of Section 3 Worker/Targeted Worker status. See Responsibilities below for contractor certification of existing workforce.

Section 3 Business

To be considered a Section 3 Business Concern a business must meet one of the following criteria:

- At least 51% or more owned by Section 3 Workers, or
- Over 75% of the labor hours performed by the business are performed by low- or very low-income persons, or
- It is a business at least 51% owned by current public housing residents or residents who currently live in Section 8-assisted housing.

Businesses seeking Section 3 preference shall certify or submit evidence verifying that they meet the definitions provided above. Grantees are allowed discretion to determine the required documentation to verify a Section 3 Business. At the time of monitoring, GOED will check that documentation has been received and is in the file, not for a specific type of documentation. A sample for for certification of a Section 3 Business has been included as Form 3-7.

Responsibilities

A local government that receives CDBG funding has the responsibility to comply with Section 3 requirements. The Grantee is also required to “ensure compliance” of their contractors and sub-contractors.

This responsibility includes:

a. Notifying Section 3 Workers and business concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids/proposals for available contracts and job openings with the Grantee;

b. Notify potential contractors of their responsibilities under Section 3;

c. Include Section 3 language in all bid documents and applicable contracts;

d. Require subrecipients, contractors, and subcontractors to meet the requirements of §75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

e. Collect information to document compliance with the HUD benchmarks listed above. GOED has provided Form 3-8: Contractor Subcontract Section 3 Workforce Report to assist Grantees in documentation collection. Grantees must include Form 3-8 in all bid documents. The form should be collected at the pre-construction conference (but no later than contract execution) to document and track Section 3/Targeted Section 3 Workers on the project. Collect Form 3-9: Final Section 3 Hours and Qualitative Efforts from the prime contractor and each sub-contractor at project completion. Alternatively, the prime contractor can aggregate the hours and efforts of all contractors into one single report.

f. Document all qualitative efforts by the Grantee and all contractors and subcontractors.

g. Respond to Section 3 complaints; and

h. Submit required Section 3 reporting as a component of the final close-out report.

Documentation

The Section 3 status of workers on the CDBG project must be documented by one of the following methods:

1. **Worker income self-certification:** the certification form (or equivalent) may be completed for each new hire on the project who meets the definition of Section 3 at the time of hire based on prior income, to be kept in the grant record for reference when tracking and aggregating labor hours worked. A sample form has been provided as Form 3-6.

2. **Worker is employed by a Section 3 Business Concern:** the contractor or subcontractor is able to provide documentation that it qualifies as a Section 3 Business Concern. All employees of a qualifying business will be considered Section 3 workers. A sample form has been provided as Form 3-7.

3. **Employer wage record:** the contractor will complete Form 3-8 prior to project start documenting all current employees and their Section 3 Status. The employor will certify that they have payroll documentation as verification. The contractor will update Form 3-8 at the time of project completion with any additional employees. The employer must be able to provide certified documentation that the worker's income from that employer is below the income limit for the workers county of residence when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis. The prime contractor will submit a Form 3-9 for each contractor or a single form with aggregated totals for every contractor on the project.

4. **Worker is a Youthbuild participant:** Verifiable documentation must be provided by the worker or the employer showing the worker is participating in a Youthbuild program.

5. **Worker is a resident of Section 8 housing:** Verifiable documentation must be provided by the worker or the employer showing the worker is a legal resident of Section 8 housing.

Section 3 Best Practices

- Publication of opportunities in newsletters or other local newspapers, including those targeted to Limited English Proficient populations.
- Use of signage at the project site and flyers posted in the project area.
- Notification of potential training or employment opportunities to neighborhood and nonprofit groups, including Public Housing Authorities, servicing low- and very low-income persons.
- Communicate opportunities to employment agencies and career centers.
- Have contractors identify all current Section 3 worker and Targeted Section 3 workers anticipated to work on the project;
- Provide assistance to contractors in their search for potential qualified Section 3 workers and targeted Section 3 workers that can perform the duties required under the contract;
- Encourage the use of HUD's Opportunity Portal to search for Section 3 workers;
- Provide assistance to contractors in their search for potential Section 3 business concerns qualified for the contract; and
- Review the benchmarks with contractors and subcontractors to ensure that requirements are understood. It is not intended for contractors and subcontractors to terminate existing employees but to the greatest extent feasible provide opportunities to low- and very low-income individuals and businesses who qualify for the work necessary to be performed.

Qualitative Efforts

Grantees with covered projects funded after November 30, 2020 are required to meet current HUD Section 3 Worker and Targeted Worker benchmarks prior to project closeout with GOED. Grantees who do not meet the benchmarks will be required to document all qualitative efforts undertaken, including those of their contractors, during the course of the CDBG project prior to closeout.

Although Grantees are only required to report qualitative efforts if Section 3 Benchmarks are not met, Grantees should begin documenting qualitative efforts at the beginning of a CDBG funded project. This will: 1) increase the likelihood of ensuring Section 3 benchmarks are met, and 2) reduce unnecessary delay at the time of closeout if benchmarks are not met. Such qualitative efforts may include, but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.
- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).

- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns. Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act

More information and useful tools for implementing Section 3 requirements can be found in the CDBG Manual on the GOED website and HUD's Section 3 Program website.

CAUTION: Compliance with Section 3 does not supersede other applicable laws and regulations. Section 3 regulations specifically state that the requirements shall be consistent with federal, state, and local laws and regulations. Therefore, the federal procurement standards cannot be violated to comply with Section 3.

CONFLICTS OF INTEREST

Background

Nothing is more detrimental to a successful procurement operation than to have the relationship between the Grantee and the contractor questioned regarding real or apparent conflicts of interest. Conflict of interest issues deal with the relationship between the parties and financial gain. Those that could be judged to have conflicts include local officials, employees, consultants, family members, and business partners.

Requirements

South Dakota Codified Law 6-1-1 prohibits any officer of a county, municipality, township, or school district, who has been elected or appointed, to be interested, either by himself or agent, in any contract entered into by said county, municipality, township, or school district, either for labor or services.

Any possible conflict of interest issues must be brought to the attention of GOED immediately. The sooner a real or apparent conflict of interest is identified the better. Grantees will be required to submit a Form 1-10: Request for Exception to Conflict of Interest Form should there be an apparent or perceived conflict of interest on a CDBG funded project.

Chapter 1: General Requirements provides more detailed information on federal conflict of interest requirements.

METHODS OF PROCUREMENT

Grantees must select from one of five methods of procurement based on the type of products and/or services being procured and their cost. Grantees must ensure that they are following the stricter of the federal, state or local requirement. Many Grantees will be required to utilize a lower threshold for procurement types than the federal requirements at 2 CFR 200.1.

Micro Purchase Procedures

Procurement by micro-purchase is the acquisition of supplies and services, the aggregate dollar amount of which does not exceed the micro-purchase threshold, currently defined as $15,000. To the extent practicable, the municipality must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the municipality considers the price to be reasonable. Micro-purchases require need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE/VBE firms when possible.

Small Purchase Procedures

Small purchase procedures entail a relatively simple and informal process that can be used when the cost of supplies or services, in the aggregate, do not exceed the current simplified acquisition threshold, currently defined as $350,000. Under this process, the Grantee must:

- Obtain price or rate quotations either by phone or in writing from an adequate number of qualified sources (at least two sources).
- Maintain documentation regarding the businesses contacted and the prices quoted.
- Make the award to the lowest responsive and responsible source.
- If applicable, prepare and sign a contract formalizing the scope of work and the terms of compensation.
- Maintain need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE/VBE firms when possible.

Competitive Sealed Bid

The Competitive Sealed Bid method is the required method for procuring CDBG-funded construction work. (See Chapter 5: Labor Standards for detailed information on preparing construction bid documents.) The following requirements apply to the competitive sealed bid procurement process:

- Competitive sealed bids are initiated by publishing an Invitation for Bid (IFB).
- The IFB must be advertised in the newspaper of daily general circulation at least one time not less than ten days before the date set for the opening of bids.
- The IFB must also be distributed to all trade publications (construction services).

- The IFB must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers are trade publications beyond the immediate locality of the work to be completed. The
- The IFB must also be distributed to MBE/WBE/VBE businesses (see MBE/WBE/VBE section above).
- The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- 2 CFR Part 200.326 requires a bid guarantee from each bidder equal to 5% of the bid price. This guarantee serves as an assurance that the chosen contractor will execute the contract within the time specified.
    - Bid guarantees can be in the form of a Bond or Cashier's check that are returned to the unsuccessful bidders.
- All bids must be publicly opened at the time and place stated in the Invitation for Bids.
- The bids must be tabulated and reviewed.
- The contract is awarded to the lowest, responsible and responsive bidder.
- Form 1-4 must be completed and sent to GOED immediately after each bid has been awarded. Failure to submit Form 1-4 may result in delayed funding.
- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.
    - The contract must be a firm-fixed-price contract (lump sum or unit price with a maximum amount identified).
- If alternates (additives or deducts) will be taken, the bid documents must be clear as to the priority order in which those alternates will be applied.

Competitive Negotiation

This method of procurement is used if the selection can be based on factors other than cost, such as experience and capacity. Procurement of architectural, engineering, planning and administrative services fall under this category. Grantees shall seek permission from GOED prior to using competitive negotiation for contracts other than architectural, engineering, planning or administrative services. Only fixed-price contracts or hourly contracts with a not-to-exceed figure may be awarded.

Competitive negotiations are initiated by publishing a Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selections (RFQ may ONLY be used for architectural or engineering services). In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the Grantee should provide or make available any materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions.

The following requirements apply to the competitive negotiation procurement process:

- The RFP or RFQ must be advertised at least twice with the 1st publication at least 10 days before the opening of bids or the deadline for submission of proposals. (SDCL 5-18A-14). The first publication shall be in each official newspaper of the unit of local government, and the second publication may be in any legal newspaper of the state chosen by the local unit of government. If the unit of government has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the jurisdiction of the applicant.

- The RFP must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers and trade publications beyond the immediate locality of the work to be completed.

- If an RFP is used, it should specify the scope of services to be provided and the type of contract to be used: fixed price, or an hourly rate with a not to exceed figure.

- An RFP should also:

    - Specify that cost and pricing data is required to support the proposed cost;

    - State anticipated start and completion dates; and

    - List evaluation criteria that will be used in ranking proposals.

- All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing.

- For both RFPs and RFQs, selection is made on the basis of the most responsible offer or price with consideration given to the factors identified in the Request for Proposal or Qualifications.

- For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.

- The Grantee must maintain documentation for all services and reasons for selection.

- The Grantee must send an award letter to the selected contractor and document the file with it.

- The Grantee must prepare and sign a contract formalizing a scope of work and the terms of compensation.

- The Grantee should promptly notify unsuccessful bidders in writing and document the file with the rejection letters.

NOTE: Consultants must not assist the Grantee with procurement if they intend to respond to the solicitation for services.

Non-Competitive Negotiations

Non-competitive negotiation is procurement through solicitation of a proposal from one source and is often referred to as sole source procurement. A contract may be awarded by noncompetitive negotiation ***only*** when the award is infeasible under small purchase procedures, competitive sealed bids, or competitive negotiations and one of the following circumstances applies:

- There is some public emergency that will not permit delay resulting from competitive solicitation (the Grantee must declare an emergency as authorized by law); or
- The results of the competitive negotiations are inadequate; or
- The product or service is available only from a single source.

CAUTION: The use of the non-competitive negotiation procurement method must be authorized in advance by GOED. Additionally, Grantees must have justification that meets federal standards for using the non-competitive negotiation process.

The following requirements apply to the non-competitive negotiation procurement process:

- Negotiations must be conducted with the selected company regarding a scope of work and price; and
- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

OTHER PROCUREMENT ISSUES

Independent Cost Estimates

2 CFR 200.323 requires Grantees to perform a cost or price analysis in connection with every procurement action more than the Small Purchase Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the procurement situation, but as a starting point, the Grantee must make independent estimates before receiving bids or proposals.

Documentation of a cost estimates and cost/price reasonableness will be checked at monitoring. More information on creating and documenting independent cost estimates can be found in Form 3-10.

Over Budget Bids

Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. Grantees have a few options for dealing with such a situation.

Options

The following options are available for awarding a bid following an overage:

1. Obtaining additional funds from another source and continuing with the original IFB.
2. Rejecting all bids, revising project scope and bid specifications, and issuing a revised IFB (competitive sealed bid) open to the entire public.

Low Bids and Change Orders

To maintain the integrity of the bidding process, the change order process must only be used when (1) the change order work fits within the scope of the original project and (2) the reason for the change is something that was unanticipated or unforeseen at the time the original contract was awarded.

Change orders cannot be used for fundamental redesign of a project and cannot be used to "fix" problems in the project specifications if the municipality was aware of the problems before awarding the contract. (If your specifications have problems, it's better to issue an addendum—if the problems were discovered before bids are due—or to re-bid the contract.) Change orders also cannot be used to take advantage of a good deal on a construction project—in other words, if you've awarded a contract for 500 linear feet of street paving work, you can't then use a change order to double the number of linear feet included in the contract just because the successful bidder gave you a really great price on the original contract.

Documentation in the Grantee's file with every change order must include:

- Documentation of Change Order Approval process as outlined in the Grantee's Procurement Policies and Procedures
- Supporting justification which describes why the change is necessary;
- Itemized cost/unit price/quantities;
- A cost and price analysis (usually conducted by an engineer) that determines the costs are reasonable;
- Any revised plans and specifications; and
- Certification that no acquisition is necessary to complete the change order work.

The architect/engineer or project inspector usually prepares change orders; however, the Grantee must approve and authorize change orders before they are executed. The proposed change should also be verified and/or recommended for approval by the project engineer, project manager, architect or other technical support personnel. The Grantee should compare such change orders to the CDBG construction budget prior to approval.

If a change order will result in a significant change in the scope of work, a new CDBG activity, or a change in location, beneficiaries, or how the project will be carried out, a contract amendment will be required.

If the change involves a new activity not previously included in the original bid and will result in a significant cost change, then the new scope may have to be re-bid. Please contact your CDBG Program Manager for a determination. Factors to be considered include whether the change order will exceed the project budget, if the service area will change and affect national objective compliance, if the original intent of the project will be altered, the NEPA scope of work is changed, etc.

Bid Alternates

Grantees are encouraged to use add and deductible bid alternates for inclusion unless doing so is not practical or not feasible. When deductible alternates are requested, the bid document issued by the Grantee must specify the method and order in which alternates will be applied in determining the low bid. Drawings must also clearly show the alternates.

For example, a project might involve the construction of a new community center that includes a portico and a small out-building to accommodate future expansion. The bidding instructions would indicate which items are to be bid as deductible alternates and the order of priority in which they are to be deducted. In this example, assume the portico and out-building are to be bid as deductible alternates, and the order of priority for deducting is first, the out-building, and second, the portico. The Grantee would go back through each bid (not just the lowest one) and first subtract the amount each bidder estimated for the out-building from the total amount she/he bid for the project. The Grantee would then check to see if any of the adjusted bids are within budget. If so, the Grantee can award the bid to the bidder with the lowest adjusted bid. If not, the Grantee would repeat the process, this time deducting the cost of the portico from the adjusted bid of each bidder. Depending on the number of deductible alternates specified, the process can be repeated until one of the adjusted bids is within budget.

It is imperative that the Grantee's IFB explicitly state the method of award, including use of any deductible alternates. Failure to be clear and precise on the procedures that will be utilized can cause confusion or disputes among bidders that could, at the very least, cause project delays.

PROCUREMENT OF PROFESSIONAL SERVICES

Costs incurred for engineering and other professional services may be allowed as eligible costs for reimbursement from the CDBG funds if those costs are incurred **after** the following:

1. The grant agreement between the State and the applicant has been completed.
2. The environmental review for the project has been completed.
3. The grant recipient has followed the procurement procedures detailed in 2 CFR 200 as contained in this Administration Manual.

Costs incurred before the completion of the above items will be ineligible for local share and reimbursement with CDBG funds.

NOTE: GOED currently requires the cost of professional services to be used as leverage in CDBG funded projects.

If the grant recipients determine that waiting for the completion of the environmental review will delay planning studies or the design of the project, then the recipient may write an environmental exemption for the services needed to design the project. The exemption is explained in Chapter 2: Environmental Review of this manual under Exempt Activities. Contact GOED for information or assistance on this exemption.

Contracts for professional services **may not** include the percentage of construction agreements. The State reserves the right to review contracts in order to assure reasonable costs and appropriate work items are included in the contract.

This section below describes steps that are required to help ensure Grantees comply with federal and state procurement requirements in the procurement of professional services.

Step 1: Prepare the RFP/RFQ The Grantee must prepare an RFP or RFQ, as appropriate.

Step 2: Solicit Responses In order to meet the goals of MBE/WBE/VBE participation; the Grantee must use the South Dakota Department of Transportation DBE Directory to identify and solicit responses from MBE/WBE/VBE businesses providing related professional services.

Step 3: Publish RFP/RFQ The Grantee must advertise the RFP/RFQ by publishing in local newspaper of daily general circulation.

The RFP/RFQ must clearly define the services requested and the factors to be used in the evaluation and selection process. Examples of evaluation criteria include:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- Past record of performance on contracts with the locality and other clients, including quality of work, timeliness, cost control, and citizen's complaint resolution in a timely manner.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.
- An evaluation consideration to small, local, minority or female and veteran owned firms. These firms may be awarded extra points in order to promote the employment of these firms.

The relative importance of each of these factors should be determined beforehand by assigning values to each (e.g., experience may be assigned 30 points out of a possible 100 points).

Step 4: Establish Evaluation Committee Appoint an evaluation team of knowledgeable members (subrecipient, town council, board of public works members, etc.) and develop an evaluation plan to rank respondents and provide guidance during the selection process. Typically, three to five people make up the Evaluation Committee. At least one of the committee members should be the Chief Elected Official (CEO) or designee.

Step 5: Open Responses Proposals must be received at the address stated in the legal advertisement, logged in and marked with the date and time received prior to being opened and submitted to the Evaluation Committee for review. Any proposal not received by the date and time stated in the legal advertisement must be returned, unopened to the submitter.

Step 6: Make Vendor Selection If interviews are conducted, each member of the Evaluation Committee must complete an Interview Evaluation and Score Sheet for each vendor short listed. Each scorer must use the same scoring and weighting criteria making their best effort to score each proposal fairly and without bias. These documents will be required at monitoring. Following the Evaluation Committee's review, the vendor whose proposal is determined to be the most advantageous to the project, based upon qualifications, price and other factors may be selected.

CAUTION: Be aware of potential conflicts of interest. Some firms have the capacity to administer projects and design buildings or public facilities systems. It is considered a conflict of interest for the firm in charge of administration to also be in the position to oversee the engineering for a project. There can also be conflicts in the areas of rehab inspection, lead based paint testing, surveying, etc. See the section on Conflicts of Interest in this Chapter above and in Chapter 1: General Requirements for more information.

Step 7: Notify Successful and Unsuccessful Proposer(s) The Grantee must notify all successful and unsuccessful vendors, in writing.

Step 8: Prepare a Contract: Once a firm is chosen and the basis of selection is documented along with the reasonability of cost, it is time to start the preparation of a contract with the successful individual or firm. See the Contract Requirements section below for information.

Step 9: Execution of Contract(s) The Grantee may execute contracts with the successful vendor after they have received Release of Funds from GOED.

PRE-BIDDING REQUIREMENTS

The first step in effective management of CDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification – usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. The contract must be consistent with applicable building codes. Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer registered in the State of South Dakota. While the engineer/architect prepares the technical specifications, the Grant Administrator must determine the applicability of Labor Standards and request the necessary wage decisions.

NOTE: The environmental review must be completed prior to publishing the bid advertisement. Please refer to Chapter 2: Environmental Review for more information.

Property Acquisition Issues

At this stage of the process, the Grantee must have obtained all lands, rights-of-way, and easements necessary for carrying out the project. All property to be acquired for any activity, funded in whole or in part with CDBG funds, is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policies for Federal and Federally Assisted Programs (42 U.S. Code Chapter 61), also referred to as the Uniform Act or URA. Included in the definition of property, among other things, are rights-of-way and easements. If the construction project involves real property acquisition, the Grantee should contact its CDBG Program Representative very early and make sure the acquisition is done according to the provisions of the Uniform Act. See Chapter 6: Acquisition of Real Property for additional information.

PROCUREMENT OF CONSTRUCTION SERVICES

This section describes certain key steps that are required to help ensure Grantees comply with federal and state procurement requirements when procuring construction services:

These include the South Dakota statutes on bidding procedures as well as the requirements set forth in federal regulations at 2 CFR Part 200. A brief outline of the proper bidding procedure is provided below.

Step 1: Obtain the Appropriate Wage Decision

Federal regulations require that the Davis-Bacon Wage Determination in effect on the day of bid opening is the wage decision that must be used for all construction on federally funded projects. When a modification is published less than 10 days before the opening of bids, and the Grantee finds that there is not a reasonable time available before bid opening to notify bidders of the modification, a report of the finding is inserted in the contract file and the wage determination in effect 10 days prior to bid opening may be used. In order to comply with federal requirements, GOED has assigned the responsibility of obtaining the appropriate wage decision(s) to the Grantee or its designee. An initial wage decision should be obtained prior to issuing the IFB and provided to the Architect or Engineer to be included in the project bid specifications.

The Grantee will need to access https://sam.gov/content/wage-determinations to obtain the Davis-Bacon Wage Determination for the project. Instructions for downloading the appropriate wage determination can be found in Form 3-11: Obtaining a Wage Decision.

The printed copy of the effective wage decision will be required at monitoring.

Step 2: Prepare Invitation for Bid (IFB)

The Grantee must develop an IFB that clearly identifies the services required including: all technical specifications required, any other requirements that apply to the contract, and instructions for preparing and submitting a bid. Bid specifications may not identify a specific name brand or provider except if required to identify a piece of equipment necessary for completion of the project. In this instance, the name brand or provider must be followed with the terminology, 'or approved equals.' It is the responsibility of the Grantee to provide the bid specifications preparer with the required CDBG contract provisions (Form 3-3), as specified in the Assistance Agreement, and the Davis Bacon Wage Decision applicable to the project. The bid specifications must include a statement that the Wage Decision is subject to change and the one that is in effect on the date of the bid opening will be applicable to the total project if the contract is awarded within 90 days of bid opening. If not, the applicable Wage Decision becomes the one that is in effect on the date that contracts are signed. GOED has provided Form 3-12: Instructions for Bidders Checklist and Form 3-14: Info for Bidders Required Documents to assist Grantees in the development of documents.

Ensure that the following are included in your bidding documents:

- Current Wage Decision
- Form 3-3: CDBG Contract Provisions
- HUD Labor Standards Requirements (HUD Form 4010)
- MBE/WBE/VBE Goals

Grantees sponsoring projects of sanitary significance must comply with ARSD Chapter 74:53:04 and ARSD Chapter 74:53:05. A letter of approval from the Department of Agriculture and Natural Resources on the project plans and specifications will be necessary for these projects. Works of sanitary significance are defined as any activity that significantly impacts a public water supply, such as a wastewater conveyance, or a treatment facility. The term public is defined as "that which is available to the people at large or to any considerable number of members of the public indiscriminately".

Step 3: Submit a copy of all project specifications (bid document only, not a copy of the plans) to the GOED.

GOED will respond with acknowledgment and acceptance of bid specifications (aka bids & specs letter).

Step 4: Publish Invitation for Bid (IFB)

The IFB must be advertised twice (at least 10 days prior to bid opening).

The first notice should be Advertised in the Grantee's official newspaper. The IFB must state the date, time and location for submission of bids. The legal advertisement must provide information pertaining to where the project plans and specifications may be obtained or reviewed. In order to obtain the highest level of free and open competition, publishing the IFB in well-known trade journals and/or sending a copy of the IFB to the area's local contractors may increase the number of responses received.

Step 5: Solicit MBE/WBE/VBE Responses

Federal CDBG regulations require Grantees to include MBE/WBE/VBE contractors to the best of their ability. Grantees will be required to submit proof of solicitation and qualification for procurement type along with other procurement documents. Documentation can include postal service return receipts, email receipts, screenshots of certification lists, etc.

Step 6: Confirm Wage Rates

Ten (10) days before bid opening, the Grantee must check SAM.gov to determine if there have been any modifications or revisions to the Davis-Bacon wage determination. If it is determined that there has been a modification, the Grantee must send it as an addendum to all contractors who received the original bid package.

Step 7: Issuing Addenda

If the bid document is amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. However, addenda may be issued only up to 72 hours of bid opening. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files.

Step 8: Conduct Pre-Bid Meeting

GOED recommends Grantees conduct a pre-bid meeting on all sealed bid procurements. The pre-bid meeting gives the Grantee an opportunity to explain all state and federal requirements of a CDBG funded project to prospective bidders.

Step 9: Receive Bids

As bid packets arrive, the time and date the bid was received from the vendor is written on the outside of the bid packet. Any bid received after the date and time due must be rejected and returned to submitter unopened.

Step 10: Open Bids

Bids must be opened and read aloud at a public meeting, at the date, time and location stated in the legal advertisement. The bidder's name and amount of bid must be read and recorded in the minutes of the bid opening meeting. No action should be taken at the bid opening meeting except by order of the authorized official to take the bids under advisement. Bid opening meeting minutes must be maintained for the project records.

Step 11: Make Vendor Selection

The Competitive Sealed Bid method of procurement requires that the construction contract be awarded to the lowest bidder, provided that the lowest bidder is found to be a responsive and responsible bidder. If the bids received are within the project budget, the Architect or Engineer will review all bid packages to determine if each one is responsive and responsible and verify that the bonding and certification requirements outlined in the bid specifications have been included. Upon completion of these reviews, the Architect or Engineer will prepare a bid tabulation sheet, and a written statement to the Grantee or Subrecipient making a recommendation of the lowest responsive and responsible bidder. The bid tabulation must be certified (stamped) by the project Architect or Engineer. If the low bidder is found to be unresponsive or irresponsible and is not recommended by the project Architect or Engineer, the Grantee's legal counsel must be consulted prior to making the determination to reject the lowest bid and consider the second lowest bidder. A written legal opinion must accompany all procurement documents where the low bidder was not selected in case of a formal bid protest or possible litigation.

Step 12: Award the Contract

After review of the bids, the Grantee or subrecipient must award the contract to the lowest responsible and responsive bidder if his/her bid is within the budgeted amount, preferably within 30 days of the opening.

CAUTION: Contracts are to be awarded within a 90-day period. If contracts are not awarded within 90 days of bid opening, any wage rate modifications that occurred within that 90-day period will apply to the contract.

If the contract is awarded to a bidder other than the low bidder, the Grantee must prepare a written statement for the project file explaining why each lower bidder was deemed non-responsible or non-responsive.

- To be responsive, the bidder must have submitted all required documentation. However, the responsiveness criteria must be uniformly applied to all bidders. If one bidder is rejected for failing to submit a particular document, for example, all bidders failing to submit that documentation must be rejected.
    - The Grantee must check the contractor and all subcontractors' names against the Federal Excluded Parties List System (available at https://sam.gov/content/exclusions). The Grantee will document that the contractors and subcontractors are not on this list.

Step 13: Submit Contract Award Report to GOED

A completed Form 1-4: Contract Award Report must be sent to GOED immediately after each bid has been awarded.

Step 14: Execute the Contract

Once the bidder is accepted and the reasonability of cost is established, the Grantee may execute the contract (provided they have received authority to use grant funds from GOED) and schedule the recommended Preconstruction Conference.

Following award of the contract, the contract documents and applicable bonding and insurance must be completed and executed. Contract documents include all the items contained in the bid package as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms.

The Following Items Should Be Included In The Subgrantee's Permanent File

1. Affidavit of Publication (Bid Advertisement);
2. All project plans and specifications;
3. Engineer's/architect's estimate;
4. Certified bid tabs;
5. Resolution of intent to award contract;
6. A copy of the executed contract;
7. Bid, Performance, and Payment bonds;
8. Sub-contracts with MBE/WBE/VBE firms;
9. MBE assurance form and certification of non-segregated facilities;
10. Section 3 documentation (see the Econonic Opportunities (Section 3) section above; and
11. BABA documentation (see the Build America, Buy America (BABA) section above.

CONSTRUCTION MANAGER /GUARANTEED MAXIMUM PRICE CONTRACTS

Construction Management Fees

The costs of Construction Management Services shall be specified in the Construction Management Agreement as fixed fees and categorized under two types:

- Fees for services during the Design Phase (PART A)
- Fees for services during the Construction Phase (PART B)

Construction Manager's fees are defined under HUD procedures as those costs which a project owner agrees to pay to the Construction Manager for the performance of specific construction management services. The Construction Manager's fee includes the following items:

1) Salaries, fringe benefits and expenses to the Construction Manager's employees at the principal offices and branch offices to the extent they are identified and assigned to the project;
2) Salaries, fringe benefits and expenses of the Construction Manager's home office staff assigned to provide field supervision, management, and administrative support in connection with performance of the work at the project site;
3) Properly allocable indirect costs applicable to the efforts discussed in (1) and (2) above; and
4) The Construction Manager's profit on the management of the project**.**

The fees are established and stated in fixed, lump-sum amounts. Fees shall not be established solely on the basis of a percentage of the construction costs.

The Construction Manager's fee shall not be increased unless it can be demonstrated that Grantee directed change has caused an increase in the resources that the Construction Manager must provide on the project. Specifically, the Construction Manager shall not receive an increase in fee for change orders written to the separate trade contractors unless it can be established that the final completion date in the Construction Manager's contract must be extended thereby requiring additional resources in the part of the Construction Manager. In those cases where no additional time is authorized, any resource required to perform the work within contract completion date will be provided by the Construction Manager at no change in the fee. On the other hand, if the Construction Manager is able to reduce the overall cost of the project, the Construction Management fee should not be reduced.

The sharing of savings with the Construction Manager on a percentage basis or any other basis is not permitted, under a HUD funded Construction Manager Contractual Agreement. The Construction Manager is compensated through a fee for services and the CM's management obligations require that the CM generate the maximum savings possible for the Grantee.

Guaranteed Maximum Price

The GMP, within the context of Federally Assisted construction, is defined as that condition under which the project owner is guaranteed that payment for completion of the work, as set forth in the Construction Management Agreement, will not exceed a stipulated sum. The GMP should be furnished in two separate breakdowns:

- The normal breakdown of cost according to elements of the Construction such as concrete, masonry, structural steel, heating, ventilating and air-conditioning, electrical, etc.
- In addition, a breakdown showing the estimated cost of each bid package or line item as the Construction Manager proposes to award the separate trade contracts.

The two types of breakdown serve different purposes. The first provides cost information related to the usual costs of the construction elements. This breakdown will be prepared early in the schematic stages of the design development and updated at prescribed internals until a GMP is established. The second is developed at the time the GMP is given and is used by the project owner to determine if bids exceed the estimated costs of the individual bid packages.

The HUD procedures require that PART B of the CM Contract, containing an acceptable GMP, be executed by the project owner, the Grantee or Subrecipient, and the Construction Manager prior to the award of contracts for the separate bid packages by the Construction Manager. With proper scheduling of the design and early identification of the separate bid packages a GMP should be obtained at approximately 80% completion of the design documents. The first several bid packages should be ready for bidding immediately following the acceptance of the GMP.

The acceptance of the GMP is a critical activity in the CM/GMP contract process. All major decisions which may affect the scope or cost of the project should have been made prior to the GMP acceptance. Changes in the design after that point should be kept to an absolute minimum. The project owner, in consultation with the Architect/Engineer, must agree that major changes affecting the scope or costs will not be made in the design documents after acceptance of the GMP. If scope changes are made after that time the Construction Manager will be entitled to a change in the GMP. The GMP must be considered in the same manner as a lump-sum bid

contract. When changes are made to design documents after award of a lump-sum bid contract they will, more than likely, cause an increase in the contract price.

When the GMP is offered by the Construction Manager, it is critical that all items of material and equipment be described with respect to quantity required and quality desired.

The GMP must always be established with regard to a specific date and identified with an approved set of design drawings and specifications. After acceptance by the project owner, the GMP should be reviewed at specific intervals to determine if the scope of the project has changed. It is recommended that the Construction Manager be required to certify on a monthly basis (or other agreed upon interval) that the cost of the work based on drawings and specifications as of the latest date is within the GMP. The validation of the GMP on a monthly basis should continue until all work in the Construction Management Agreement has been bid, placed under contract, and completed.

NOTE: Grantees must ensure they are in compliance with South Dakota Codified Law 5-18B

CONTRACT DEVELOPMENT

All work and services to be accomplished for the completion of a Community Development Block Grant (CDBG) funded project must be covered by a legally enforceable, fully executed contract, regardless of the source of funds to be used for payment of the contract amount.

Before any contract may be fully executed, it is the Grantee's responsibility to ensure that the contract complies with applicable federal and state laws, provides complete and full provision of the project scope, and avoids any real or implied Conflict of Interest concerns.

Per 2 CFR 200.323(d) **Costs Plus Percentage of Cost** contracts are specifically prohibited by CDBG regulations for any type of work or services to be performed on CDBG funded projects.

All contracts executed for performance of CDBG related activities must include a full and complete description of the federal and state requirements for contract compliance. Form 3-3: CDBG Contract Provisions must be physically attached to each contract.

Bonding Requirements

Bonds are negotiable instruments required by federal and state law from construction contractors as a form of insurance. The bonds are available to contractors from surety companies, which are then turned over to the Grantee to protect against situations that may arise. Some of these situations include:

- Work not completed as specified and/or the contractor refuses to finish the work without a change order or price escalation;
- Laborers or subcontractors are not being paid for work and are suing the Grantee to recover their loss; or
- Payment of liquidated damages is required, arising from labor standards violations.

Construction contracts must include the following documents either physically or by reference to the project bid specifications and any addendums:

1. Bid Bond, Payment Bond and Performance Bond obtained by contractor and provided to Grantee to insure contract fulfillment. Grantees must follow the stricter of the federal or local requirements when determining threshold amounts for bonding requirements.
    - The Bid Bond guarantees that the selected bidder will execute the required contract documents within the specified period of time. The Bid Bond must be equal to 5% of the bid price.
    - The Labor & Material Payment Bond is binding upon the contractor, subcontractors and their successors or assigns, for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must be for 100% of the contract price.
    - The Performance Bond ensures that the contractor will fulfill all obligations under the contract within one year of substantial completion. The performance bond must be for 100% of the contract price

The bonding company issuing the bonds must hold a 'Certificate of Authority' as acceptable sureties.

Insurance Requirements

A copy of the Contractor's Certificate of Insurance should be provided to the Grantee. The Grantee is responsible for ensuring that the levels are adequate to cover the project.

Contract Requirements

All contracts executed for performance of CDBG related activities must include Form 3-3: CDBG Contract Provisions as well as the following:

1. Effective date of contract,
2. Detailed description of the work or services to be performed,
3. Specifications of materials or other services to be provided,
4. Time for performance and completion of contract services,
5. Method of Compensation,
6. Method of addressing Change Orders and Delays/Extensions of time,
7. Printed and signed names and titles of Signatories for all contract parties.
8. Applicable Federal Wage Decision (if applicable)

Retainage Requirements

A retainage account may be set up to ensure the project is satisfactorily completed, all suppliers have been paid in full, and all contractors, subcontractors and suppliers have submitted lien waivers. The amount of retainage withheld may not exceed 5% of the total contract amount.

A Retainage Agreement must be reached, and included in the contract, between the Grantee and the prime contractor to establish a procedure for holding the retained funds until all parties agree that the retainage may be released to the contractor upon satisfactory completion of the project.

Retainage Account funds may be:

1. Deposited into a mutually agreed upon financial institution, in a separate account. If deposited to an interest-bearing account, any accrued interest belongs to the contractor.

1. Deducted from drawdown amounts for payments due to contractor. The State holds the retainage funds until they become due and payable to the contractor.

NOTE: If the contractor has provided Contractor's Affidavit of Release of Liens (AIA Form G706A) and lien waivers from all subcontractors and suppliers, the contractor may request the balance of retainage.

PROCUREMENT RECORDKEEPING

GOED has provided Form 3-13: Sample Procurement Checklist to assist Grantee's in compliance and documentation of all CDBG funded procurement actions.

REVISION HISTORY

Revision	Date	Description of changes	Approved By
1.0	8/21/24	• Initial Release	S Deyo
2.0	5/22/26	• Revised Form 3-3: CDBG Contract Provisions (Word) and (PDF) • Added Form 3-14: Information for Bidders Docs • Added Form 1-4: Contract Award Report to the steps for Competitive Sealed Bid process. • Updated Micro Purchase threshold to $15,000 per 48 CFR 2.101 • Updated Small Purchase threshold to $350,000 per 48 CFR 2.101 • Updated Section 3 Project Threshold to $300,000 per FR-6085-N-05 • Removed requirement to check the HUD Limited Denial of Participation List (now all in SAM.gov) • Removed all requirements regarding “Language Access Plan” (now voluntary) • Updated MBE/WBE Participation section to include Veteran-Owned businesses (VBE) • Updated hyperlinks	S Deyo