



**TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER**

Texas Community Development Block Grant Program

Construction Procurement





Procurement Procedures

Construction and Materials Contracts

- Grant Recipients must adhere to all applicable state, federal and local requirements regardless of the source of funds.
 - Includes sub-grantees
- Must demonstrate open, fair, and uniform procurement process
- Environmental Clearance **must** be approved prior to execution of contract

During this presentation, we will focus on the different procurement procedures used for construction and materials contracts.

Its important that you provide adequate documentation to show that the process was carried out in an open, fair, uniform and thorough manner. Failure to maintain proper documentation may result in disallowed costs

Grant Recipients must comply with TxCDBG program requirements in order to be considered eligible for grant funds or match injection.

Grant Recipients must adhere to all applicable state, federal and local requirements regardless of the source of funds.

This includes any costs directly relating to the CDBG project, even if not utilized towards match commitment.

This includes sub-grantee's for instance : If the Municipal Water District will bid construction activities for the county

Environmental clearance must be completed before the Grant Recipient executes any construction or materials contract



Procurement Procedures

- 2 CFR 200.319 (a)
- *Contractors that develop or draft specifications, requirements, statements of work or invitations for bids or request for proposals must be excluded from competing for such procurements*
- Key – Open & full competition

To ensure that the procurement process is carried out in an open and fair manner...every Grant Recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees.

A conflict of interest would arise if any city or county staff, elected official, board member or any other person that is in the position to participate in decision making abilities, exercises any functions with respect to CDBG projects, or has inside information, that award of a contract would provide tangible benefits to that person.



Methods of Procurement

- **Sealed Bids (formal advertising)**
Procurement of construction or materials.
- **Small Purchase (\$50,000 or less)**
Procurement of construction services, supplies or materials.
- **Micro-purchase (\$2,000 or less)**
unanticipated supplies or services.
- **Non-competitive Proposal (sole source)**
TDA approval required

I will go into detail about each type of procurement later. The 4 most common methods of procurement utilized for construction services and material/equipment are:

Sealed Bid (required for contracts anticipated to exceed \$50,000) contract is awarded to the responsible bidder whose bid, conforms to all the material terms and conditions and is the lowest in price

Small Purchase (services, supplies or materials less than \$50,000)

Micro-purchase (supplies, or services \$2,000 or less) This is generally for unanticipated costs

Non-competitive Proposal (sole source) method may be appropriate. This type of procurement only be utilized under special circumstances such as urgent need or when one service provider or source available.

This type of procurement requires pre-approval from TDA



Construction & Materials Contracts

- “Sealed Bids” or “Small Purchase” is most often utilized method of procurement for construction/ materials contracts
 - Sealed bids –contracts exceed \$50,000
 - Small Purchase – contract must NOT exceed \$50,000
- Contracts paid **in whole or part** must be procured per program guidelines
- Buy America Build America Act (BABA)

For procurement of a construction contractor and/or materials for most TxCDBG contracts, the communities must utilize the “Sealed Bid” or “Small Purchase” Process

Keep in mind that this includes construction services and materials contracts paid in whole or in part with TxCDBG funds regardless of the source of funds.

Grants recipients receiving grant funding beginning September 1, 2023 for infrastructure projects must ensure and document that all applicable products used in the project were manufactured in the United States. GR should pay careful attention that the bidding process ensure full compliance with this regulation more specifically outlined in Chapter 4 – Buy America Preference.

First, we will review the Sealed Bid process as it the most widely utilized method of procurement for construction contracts.



Sealed Bids (Formal Advertising)

- Procurement of construction, materials, or equipment contracts whose total cost is **more than \$50,000**
- Sealed bids are publicly solicited and a firm, fixed-price is awarded to the **responsible respondent** whose bid, conforming with all the material terms/conditions of the invitation for bids, is **lowest and best** in price

Sealed Bids also referred to as “Formal Advertising” is the method of procurement for equipment, materials or construction contracts whose total cost is more than \$50,000. The advertisements must be run in the Grant Recipients local newspaper, and they must hold a public bid opening.

- The bid should be a firm, fixed-price and is awarded to the **responsible respondent** whose bid, conforming with all the material terms/conditions of the invitation for bids, is **lowest and best** in price

Municipalities must follow Texas Local Government Code § 252.043; which state that the contract must be awarded to the **lowest responsible bidder** or to the bidder who provides goods or services at the best value for the municipality

Counties are required to comply with Texas Local Government Code § 262.027 which state that commissioners court shall award the contract to the responsible bidder who submits the **lowest and best bid**



Sealed Bidding-Steps 1 & 2

Step 1: Prepare Bid Package

- Bid should provide sufficient technical information for competitive bids
- Delineate bid alternatives
- Cost-plus-a-percentage-of-cost" or "percentage of construction cost" is not allowed
- Ensure that all required contract provisions and inserts are included in bid packets and contracts.

Step 2: Davis Bacon Act Requirements

- Comply with Davis-Bacon Act requirements
 - ✓ Confirm wage decision within ten days but not less than five days before bid opening.
 - ✓ Include wage decision in bid packets

The first step is for the project engineer to prepare the bid package that provides sufficient technical information for potential bidders to submit a competitive bid.

Bid should clearly identify any items or activities included in the bid schedule that are not part of the TxCDBG contract.

For instance; additional activities or oversizing beyond the approved performance statement or paid solely by local or other funding sources should be identified as a bid alternate.

- Any line item for profit, overhead, contingency, or other related terms that do not describe actual work to be performed will not be reimbursed or allowed.
- Nor is a percentage of construction cost allowed.

Sample contracts, language, regulations are provided in the Implementation Manual. Please use the most current program year as regulation can change.

Second step is to ensure Davis Bacon Act Requirements are met as we discussed in the Labor presentation.



Sealed Bidding- Steps 3 & 4

Step 3 & 4: Advertise for Bids & Promote Participation

- Publish invitation for bids
- Promote Participation of MBE/WBE and Section 3 Business Concerns:
 - ✓ invitation for bids in the Dodge Report, CivCast, Texas Contractor, Minority Business Development Center, WIOA One stop station
 - ✓ update MSR Pre-Selection data

Step 3. The invitation for bids should be published in the Grant Recipients locally distributed newspaper.

The solicitation should include pertinent sufficient /specifications and directions needed for interested contractors to submit a bid. The instructions must include but is not limited to:

- description of work needed, bonding requirements, how to procure detailed technical specifications, CDBG Grant number, Davis Bacon Act requirements, due date, time, place of bid opening and anticipated award date by governing body.

To promote participation of MBE's and Section 3 Business Concerns, Grant Recipients should update TDA-GO Materials and Services Record Pre-Selection Clearance data including bid opening date. This is proof that the data is made available to the public during the bid process.

I also encourage that the project engineer reach out to local contractors and send notices to other resources such as CivCast, Dodge Report, Texas Contractor, Minority Business Development Center, Local Workforce Solutions Offices (WIOA One Stop Shop) in order to encourage competition.



Sealed Bidding

- Bid invitations must be published at least **once a week for two consecutive weeks.**
 - two published notices must be **seven** days apart.
- First publication must be at least 15 days prior to bid opening date
- Bid addendums issued less than 7 days prior to bid opening will require republication of bid notice.
- Any change to original bid opening date or time requires republication.
 - *Cities must follow Local Government Code Section 252.041 (a)*
 - *Counties must follow Local Government Code Section 262.025 (a)*

Local Government Code - Chapter 252 and 262 requires that invitations for sealed bids be published at **least once a week** in the local newspaper for **two consecutive weeks** prior to the bid opening.

Ads must be 7 days apart

In addition, TDA changed program policy in 2023 to clarify that the 1st bid ad is published at least 15 days prior to bid opening. This rule applies to both cities and counties.

Please keep in mind that if an addendum to the bid package is necessary, it must be distributed to each potential bidder. The Grant recipient must retain verifiable proof that the addendum was distributed to all potential bidders.

The addendum shall allow adequate time for consideration in bid preparation (usually at least one week). Otherwise, bid opening date must be **extended** and the bid advertisement **must** be republished at least once.

The republished notice will include the place, time and date for the new bid opening and must be published at **least seven days** prior to the new bid opening.

If you have concerns regarding this program requirement, please contact TDA as failure to comply will result in findings and possibly other sanctions as deemed appropriate.



Sealed Bidding –Step 5

Step 5: Hold Public Bid Opening

- Open and read bids out loud
- Announce all bidders with complete packets & apparent low bidder

Grant Recipients may not negotiate the price with solely the low bidder

The Grant Recipient must conduct a **public bid opening** for sealed bids.

Its imperative that the Grant Recipient noting the **date and time** of receipt for each bid on the bid envelope as any bids received after time due cannot be considered

Each bid must be opened and read aloud. The engineer will record the base bid, along with any alternates, on a bid spreadsheet and acknowledge all bidders with complete packets and announce the apparent low bidder.



Sealed Bidding –continued

- **Options for overbids**
 - Reject all bids
 - Accept deductive items
 - Accept low bid and provide additional local funds
 - Accept the low bid and execute the construction contract for full amount; identify work that may be eliminated through change order if the contractor agrees to the reduction

If the bids received exceed the designated budget, the GR has the following options...

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Read up top



Sealed Bidding –continued

Electronic Bids

- Local Government Code 252 and 262 permit as long as local governing body has adopted written rules and procedures to ensure identification, security, and confidentiality of electronic bids.
- **Grant Recipients must maintain:**
 - Governing body written rules
 - Governing body minutes adopting procedures
 - Documentation of application software

Procedures must comply with statutory and programmatic requirement.

We are seeing more electronic bids with our cities and counties. This is permissible however you must have adopted written rules and procedures per Local Govt. code prior to accepting electronic bids.



Sealed Bidding – Steps 6 & 7

Step 6: Clear the Contractor

- Contractor **must** be cleared on SAM prior to award

Step 7: Award the Contract

- Formal Award within days indicated in advertisements
- Detailed minutes
 - identify any bid alternates

The Grant Recipients must verify the Construction Company and all Principal Owners eligibility through the System for Award Management prior to any formal action.

If the contract has not been awarded within 90 days after bid opening, You must ensure wage rate has not changed.

If wages have increased, the higher wage rate must be paid.

The minutes of award should identify the company and amount of award.

If the governing body did not award the contract to the low bidder, the minutes must include justification.



Sealed Bidding - Step 8

Step 8: Execute the Contract

- Authorized Official must execute the contract



Update Materials and Services Report (MSR)

Wait...Is your environmental cleared?

Now its time to execute the construction contract. You must ensure that the environmental clearance has been received before executing any construction contract or materials contract.

Nothing will kill a project faster...

This is essential as failure to received clearance prior to execution will result in ineligible costs and other appropriate sanctions including possible termination of your contract.



Small Purchase Procurement

- Relatively simple and informal procurement methods to secure construction services, supplies, equipment, or non-professional services that cost, in the aggregate, **\$50,000 or less**
- The Local Government Code **prohibits separate, sequential, or component small purchases** to avoid the competitive bidding requirements - Sections 262.023 and 252.021

The GR may choose to utilize the small purchase process. This is a relatively simple and informal method.

Prior to small purchase procurement you should get an estimate from the engineer. If the estimated cost is greater than \$50,000 small purchase procurement would not be considered appropriate and is not an allowable cost.

The Small Purchase process must not be utilized to avoid or circumvent the competitive bidding and requirements.



Small Purchase - Steps

- This first step of small purchase should be preparing scope of request
- Comply with Davis-Bacon Act Requirements
- Contact Venders for quotes
 - minimum of three vendors
- Promote participation of MBE, WBE and Section 3 Businesses

Small purchase steps –

1. Prepare scope of request
2. Comply with Davis Bacon requirements

Although this is a simplified method of procurement you must ensure that the contractor must comply Davis Bacon Act, bonding and related laws and regulations.

DBRA is required for construction (labor) contract in the amount of \$2,000 or more

You must be sure to maintain record of your process that was done.

3. Contact Vendors for quotes



Small Purchase – Steps cont'd

- Evaluate responses and select the lowest qualified quote
- Clear contractor prior to award
- Award and execute the contract



Small Purchase Procurement

- Submit **Small Purchase Procurement Record** **30 days** to Contract Specialist. *Authorized official must sign*
- Retain all bids-quotes, executed contract, verifiable SAM clearance for monitoring
- Cost may not exceed **\$50K including change orders**

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Small Purchase Procurement Record

Grant Recipient: _____ Contract No: _____
Region: _____

Scope of Service/Item Description: _____

Contacts Made:

1.	Name of Firm/Supplier (No. 1) _____	Date Contacted _____
	Name of Person Contacted _____	Quoted Price _____
2.	Name of Firm/Supplier (No. 2) _____	Date Contacted _____
	Name of Person Contacted _____	Quoted Price _____
3.	Name of Firm/Supplier (No. 3) _____	Date Contacted _____
	Name of Person Contacted _____	Quoted Price _____

Verified on _____ that successful bidder was not excluded as a vendor per Sam.gov.

Based on the contacts made concerning the above-referenced scope of services/item description and that Vendor is not excluded from Sam.gov on _____ (date of clearance), I authorize _____ on _____ to _____ to begin work or to supply the item(s) for the quoted price.

Signature of Authorized Person _____
Printed Name _____
Title _____

Please be sure to submit the small purchase record within 30 days of execution to your contract specialist.

The responses (including responses that indicate no interest or quotes provided) must be recorded and retained for monitoring

Be careful of change orders. If the estimated cost is greater than \$50,000 small purchase procurement is not an allowable cost.

Also, aggregate purchases exceeding \$50,000 for items that in normal practices would be procured may result in disallowed costs.

You may not conduct multiple small purchases with the intent to circumvent the sealed bid – competitive bidding process



Micro-Purchases

- *Step 1 - Identify Supplies or services needed*
- *Step 2 - Identify a Vendor or Supplier to meet the need*
 - SAM Clearance

Micro- Purchase - For purchases of supplies or services that equal to or less than \$2,000 the Grant Recipient may use this processes to expedite the transaction.

Micro-purchases are generally made for unanticipated costs and not meant for materials and construction.

The aggregate of all mirco – purchases may not **exceed \$2,000 and** SAM clearance is required.

Also, TDA will monitor the use of micro-purchases to ensure that they are eligible and not being used to circumvent competitive procurement .



Non-Competitive Procurement

- Grant Recipient **must** obtain written permission from TDA
- Must qualify according to one of the following exceptions under 2 CFR §200.320 (c):
 - (1) The item is available only from a single source;
 - (2) Public exigency or emergency will not permit a delay resulting from competitive solicitation;
 - (3) TDA expressly authorizes noncompetitive proposals in response to a written request; or
 - (4) After solicitation of a number of sources, competition is determined inadequate.

SAM clearance is required

Non-competitive proposal procurement may be used when award is not feasible under small purchase, sealed bid or competitive proposal. Its most often used for emergency situations and disaster projects.

TDA will not approve simply for budget constraints. The exceptions are:

1.) Single Source: this method allows solicitation of a proposal from only one source when the item or service is only available from a single source. For instance, the city must utilize the Utility Company (sole source) provider such as a gas company.

2.) Public urgency/emergency situations: State laws generally allow noncompetitive negotiations in such cases where the urgency for carrying out the project will not permit delays caused by competitive solicitation.

These exemptions are those typically funded under the Disaster Relief or State Urgent Need Fund.

3.) If the bid are coming in, over budget alone will not justify non-competitive procurement.

Please keep in mind that SAMs' eligibility is still required. **And sole source providers may be required to comply with David Bacon Act requirements as well.**

Failure to obtain Written permission from TDA prior to using the Non-Competitive Procurement method will result in a finding which may include other appropriate sanctions, including ineligible costs.



Third Party Procurement

- Grant Recipient **must** obtain and retain procurement records.
 - Interlocal Agreement Cooperative & GR
 - Bid Ads
 - Documentation of affirmative steps
 - Including small, minority- and women- owned business enterprises
 - Bid tabs
 - Update the MSR
 - If purchase order used, it must contain required contract provisions

A Grant Recipient may choose to purchase certain goods and services through an interlocal agreement with an authorized purchasing cooperative,

- the Texas Association of School Boards,
- Buy Board, or
- the Houston-Galveston Area Council (HGACBuy).

All state and federal competitive procurement requirements apply to purchases through these entities; however, many steps may be conducted by the third party rather than the Grant Recipient.



Change Orders

- Change orders may not:
 1. Increase the original contract price by more (25%)
 2. Decrease the original contract price by more than (25%) for municipalities and (18%) for counties without the consent of the contractor

As a reminder...

If there is any increase or decrease to a construction or material contract, the Grant Recipient must submit Construction Change Order in TDAGo for approval.

It is important to keep in mind that a Change Order may trigger the need for an amendment or modification to the Perf. Statement or Budget.



Bonding Requirements

- **Bid Bond** – Required by 2 CFR §200.326 (a). Must be for 5% of bid price on contracts greater than \$100,000.
- **Performance Bond**
 - ❖ Required on **all** public works projects costing more than \$100,000 for counties and cities
- **Payment Bond**
 - ❖ Required on **all** public works projects costing more than \$25,000 for counties and \$50,000 for cities
 - ❖ If a locality fails to obtain a bond from the prime contractor, they become liable for paying workers, subcontractors and material suppliers

Bonding requirements...

Construction contracts require minimum bonding as stipulated in Government Code

The type of bond is based upon bid amount.

In addition, municipalities and counties have different threshold requirements. Refer to local gov't codes.



Bonding Requirements

- **Performance Bond Claims**
 - Must contact legal counsel for guidance & ensure compliance with laws & regulations.
 - Must maintain formal actions taken

 - Original Contractor & Assigned Contractor must submit:
 - Final Wage Report(s)
 - Certificate of Construction Completion(s)
 - Copy of Bond(s) with explanation

Notify TDA immediately

If the parties cannot come to terms, the surety (bonding) company may request that the contract be terminated according to the termination and assignability & novation clauses in the contract.

In these cases, the Grant Recipient must contact their legal counsel to ensure that termination and assignability are performed in accordance with conditions of the contract and in compliance with federal, state, and local codes and regulations.

If this occurs, please contact your assigned contract specialist immediately so we are aware of issue.



Contract Provisions

- Texas Labor Code §406.096 requires written certification that the contractor provides workers' compensation insurance coverage.
- Ensure compliance with all required provisions, including local, state and Federal Regulations
- **Appendix A** - Link to State & Federal Regulations
- **Appendix B** - Required Contract Provisions
- **Appendix C** - Vehicle/Equipment General Conditions
- **Appendix F** - Bid & Contract for Construction
- **Appendix F***- HUD-4010 Required Contract Provisions
- **Appendix G** - Material/Supplier Bid and Contract

HINT: Use the most current sample available.

As a reminder please ensure that all required contract provisions and inserts are included in bid packets and contracts.

Samples contracts, language, regulations are provided in the Implementation Manual.

It may be tempting to simply reuse the documents however contract conditions and program requirements change over time.

Please use the most current version to avoid issuance of a finding or concern during Monitoring review.

Also, please be aware that Texas Labor Code §406.096 requires that governmental entity's obtain written certification of contractor workers' compensation insurance coverage for employees of the contractor employed on the public project..

All construction contractors as well as, subcontractors must provide the governmental entity with proof of coverage. The requirement must be included in bid specifications and contracts specific language and provisions.



Best Practices

- Utilize appropriate Procurement method and procedure.
- Ensure SAMS clearance prior to award
- TDA cannot waive statutory requirements
- Bids may not be corrected or changed
- Addendums may require additional publication
- Recordkeeping – maintain copies of solicitations, all bid/proposals received, committee notes, formal award/authorization, executed contracts, etc.

Failure to maintain proper documentation may result in disallowed costs.

Best Practices and Things to Avoid for successful projects:

- 1.) Grant Recipients must adhere to all applicable program, federal and state regulations regardless of the source of funds. Another words, Procurement laws and regulations must be followed for all service providers relating to the CDBG project project, including local funds even if not needed for match commitment.
- 2.) All services providers regardless of cost (grant or local) must be cleared on SAMS prior to formal award. This includes Council of Governments and principal owners of businesses and any other provider working on the project.
- 3.) Bids costs may not be “corrected” by engineer, nor can bid line items be changed or deleted prior to award to fit “budget”
- 4.) If the bid opening date, time or location for sealed bid is changed, the engineer must issue an addendum and the bid advertisement must be republished at least once. The republication must be least seven days prior to the new bid opening.
- 5.) TDA can not waive statutory requirements: such as requirements for published notices, exceeding change order thresholds - such as exceeding the 25% increase per local government code.

6.) Bids must describe actual work to be completed; TDA will not reimburse these costs if such factors are not delineated. Any line item for profit, overhead, contingency, or other related terms that do not describe actual work to be performed will not be reimbursed.

Recordkeeping: Please keep in mind that all documents involved in the procurement process are essential in providing verifiable sources during the monitoring review. Grant Recipients must retain adequate documentation to ensure that federal and state procurement requirements were met.

The TxCDBG Implementation Manual has much more detail and valuable resources such as sample advertisements and contracts for your convenience. These resources are in word format for ease of revising notices such as advertisements for sealed bids. In addition, the CDBG Manual includes links and specifics regarding statutory laws, regulations and polices which must be followed.

Again our goal at TDA is to support our rural communities for successful projects. Please do not hesitate to contact us if you have any questions or concerns regarding the procurement process.

Questions/Comments



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