

# **CHAPTER 3: PROCUREMENT & CONTRACTING**

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## CHAPTER 3: PROCUREMENT & CONTRACTING

Grantees/units of general local government (UGLGs) must comply with all applicable federal, state and local procurement and contracting regulations and policies for the Community Development Block Grant (CDBG) project. Conflict of interest provisions within the Code of Federal Regulations must be addressed as part of procurement and contracting processes.

### 1.0 LOCAL PROCUREMENT POLICY

The Division of Energy, Housing and Community Resources (DEHCR) requires all UGLGs to adopt written procurement/purchasing procedures **prior** to the *Grant Agreement* being executed for the CDBG monies. An UGLG must use procurement/purchasing procedures that are in conformance with federal, state and local laws and regulations. Federal regulations and standards are identified in [2 CFR 200.317 - .343](#), which establish the standards that are applicable to procurement for federal grants, cooperative agreements, and sub-awards to state, local, and Indian tribal governments. State and federal CDBG procurement requirements and guidance are provided in this chapter.

The UGLG must have written selection procedures for adequate procurement and contracting to ensure that:

1. The purchase of unnecessary or duplicate items is avoided. Where appropriate, an analysis should be made of lease vs. purchase alternatives;
2. Whenever possible, use of federal excess and surplus property, or of intergovernmental agreements for procurement or use of common goods and services should be considered to foster greater economy and efficiency;
3. All purchase orders (and contracts) are signed by the UGLG's authorized official(s);
4. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;
5. Timely payment to vendors occurs when the order is delivered, inspected, accepted and payment is authorized;
6. ***A cost or price analysis is performed for every procurement action***, with contract modifications, and documentation to that effect is maintained in the UGLG's files. The method and degree of analysis is dependent on the facts surrounding the particular procurement method, but as a starting point, ***the UGLG must make independent estimates before receiving bids or proposals***; and
7. Profit or fee is negotiated separately from price where competition is lacking, or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the

contractor, the contractor's investment, the amount of subcontracting, the quality of past performance, and industry rates for the area.

**When the UGLG is using CDBG funds to cover the costs** for a CDBG project purchase or contract, the UGLG must comply with its local procurement/purchasing policies *and* state and federal CDBG procurement/purchasing requirements summarized in this chapter; **complying with all and following the most restrictive of the three (among local, state and federal laws and policies) when there are differences.**

**When *not* using CDBG funds to cover the costs** for a CDBG project purchase or contract, the UGLG must **comply with its local procurement/purchasing laws and policies.**

*Procurement/purchasing policies examples are provided in Attachment 3-A (accessed on the DEHCR [CDBG Implementation Handbook](#) website).*

## 2.0 INITIAL PROCUREMENT DECISIONS

Questions to consider when determining the procurement requirements that apply for each CDBG project activity include:

1. Will a third party be selected to perform all or part of the CDBG project activity, using some method of procurement, or will the work be performed in-house by municipal employees (either the UGLG's own employees or through a cooperative agreement with a partnering UGLG or other governmental entity)?
  - If the work will be performed in-house by municipal employees or a regional planning commission, then no procurement process is required to be completed.
  - If contracting with a third party, then some or all federal, state and local procurement requirements will apply.
2. Will the contract be for construction, professional services (e.g., engineering, grant administration, planning, auditing, legal, etc.), or some other non-construction related work/purchase (e.g., equipment, supplies, etc.), and will CDBG funds be used to fund all or part of the contract?
  - If the contract is a construction contract, competitive procurement,\* with adherence to federal, state, and local procurement regulations and policies, is required. Refer to the procurement options summarized later in this chapter to determine which option is most appropriate based on the anticipated amount of the construction contract.
  - If the contract is a professional services contract or other non-construction contract and CDBG funds are not funding any part of the contract, then the UGLG must ensure compliance with its local procurement policy.

- If CDBG funds are funding all or part of the professional services contract or other non-construction contract, and the contract is *not* with another governmental entity and *not* with a quasi-governmental entity (e.g., Wisconsin Regional Planning Commissions and certain non-profit publicly/government-funded Economic Development Organizations), then the UGLG must ensure compliance with federal, state, and local procurement regulations and policies. Federal regulations require that professional services and other non-construction work/purchases funded with CDBG monies generally must be competitively procured.\* Refer to the procurement options summarized later in this chapter to determine which option is most appropriate based on the type of the professional services contract or other non-construction contract.

*\*Other exceptions for federal competitive procurement requirements are noted under the sole source procurement option summarized later in this chapter.*

## 3.0 CONFLICT OF INTEREST

### Applicability

The conflict of interest provision applies to “covered persons”, which may include any individual who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of an UGLG, or of any designated public agencies, or subrecipients. Except for eligible administrative or personnel costs, the general rule for those individuals described above (who exercise or have exercised any functions or responsibilities with respect to CDBG activities and who are in a position to participate in a decision-making process or gain inside information regarding such activities) is that they **may not**:

- Obtain a financial interest or benefit from the activity;
- Have an interest or benefit from the activity; nor
- Have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder.

This rule also applies during their tenure or for one year thereafter to themselves and to those individuals with whom there is a family or business tie, with “family” intended to mean immediate family. The definition of an “immediate family member” is defined differently within the state statutes than the federal regulations, with the federal definitions being broader. Under federal HUD definition, an “immediate family member” includes “...(whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.”

**IMPORTANT NOTE!**

The UGLG's Chief Elected Official may not receive a CDBG loan or any financial interest from the CDBG activity.

To determine if there are any potential conflicts of interest, the UGLG should gather the above information at the point of bid submittal (for construction contracts), proposal submittal (for professional services contracts) or property identification (acquisition/relocation). Potential contractors or sellers should be asked to disclose family or business ties to persons involved with the CDBG project that may be potential conflicts of interest. The *Potential Conflict of Interest Disclosure* form (Attachment 3-B) may be used as a template for preparing a disclosure form. The *24 CFR 570.489(h) Conflict of Interest Clause* (Attachment 3-C) must be included in all bid packets for construction contracts.

**Conflict of Interest Reviews and Exceptions/Waivers**

An exception/waiver to the federal conflict of interest provisions may be requested by the UGLG and requires DEHCR approval, and may require HUD approval, depending on the nature of the conflict of interest. Contact the assigned DEHCR Project Representative for further guidance on submitting a request for such exception/waiver. Prior to submitting an exception/waiver request, public disclosure and review of the potential conflict must occur. A legal opinion also must be obtained from the corporate or municipal counsel specifically stating that the interest for which the exemption is sought and awarding the contract would not violate state or local law.

The following steps are to be used to identify and review potential conflicts of interest, and request an exception/waiver to the federal conflict of interest provisions, if determined necessary, ***prior to awarding a contract to the contractor for which the potential conflict of interest has been disclosed:***

1. Review the contractor's potential conflict of interest disclosure (which may be on the *Potential Conflict of Interest Disclosure* form (Attachment 3-B – must be customized by the UGLG for use) or similar document provided by the UGLG to potential responders or confirmed responders of the procurement solicitation for the contract. The UGLG's form should have the "covered persons" from the UGLG associated with the CDBG project listed, such as the UGLG's officials and employees involved with the project, and other persons from other entities/organizations also associated with the project who had or will have a role in the procurement solicitation, contract award, reviewing or approving payment requests, and contractor oversight and compliance monitoring for the CDBG project.
2. Identify "covered persons" in relation to the conflict of interest restrictions for the CDBG project.

3. Consult legal counsel as needed prior to the taking the steps below. This is highly recommended to ensure state and local laws are followed for the potential conflict of interest disclosure and review process as listed below. Note that a written opinion from legal counsel will be required and must be submitted to DEHCR, as specified in #11 below.
4. Inform the company(ies)/firm(s) and persons for whom a potential conflict of interest has been identified that their names will be disclosed at the local Board/Council/Committee meeting.
5. Add “disclosure of potential conflicts of interest” as a discussion item on the Board/Council/Committee meeting agenda and make the agenda available to the public. The meeting must be open to the public, with the proper public notice of the meeting given, following the UGLG’s local policy/procedure and applicable state laws for giving notice for the UGLG’s meetings.
6. Disclose and review the potential conflict of interest at the public meeting, disclosing the company(ies)/firm(s) and persons identified as having a potential conflict of interest and discussing the potential conflict publicly. Any covered person identified in the disclosure of the potential conflict of interest should not attend this meeting or must recuse themselves from voting on a determination regarding the potential conflict of interest).
7. Adhere to the UGLG’s applicable local policies (e.g., ethics and conflict of interest policies related to decision-making, voting, procurement and contracting) in reviewing all potential conflicts of interest;
8. If a contractor has been identified as having a potential conflict of interest, disclose the name of the person and company/firm, and the nature of the potential conflict of interest (family or business tie[s]) applicable to the project at the public meeting;
9. Ask all in attendance at the public meeting if there are any objections to awarding the contract to the contractor in question, with the objective being to review the potential conflict of interest publicly and determine if there are any objections to awarding the contract;
10. Include the disclosure and review of the conflict of interest and “covered persons” discussed in the meeting minutes. Make the meeting minutes public through posting the minutes in accordance with local policy for public meetings, through physical postings in prominent/visible locations in the community, on the UGLG’s website, and/or publishing in the local newspaper, etc. (following local policy).
11. The UGLG must obtain and submit to DEHCR a letter or email from legal counsel specifically stating that it is their legal opinion that the interest for which the conflict of interest exemption is sought and awarding the contract would not violate state or local law. Refer to the federal regulations [[24 CFR 570.489\(h\)](#)] for guidance on the requirements to request for a waiver to the conflict of interest (*Attachment 3-C: Conflict of Interest Clause*);

12. If the UGLG's determination after reviewing the potential conflict of interest and the legal opinion is that no conflict of interest exists, then the UGLG is to submit to DEHCR:

- a summary on municipal letterhead signed by the chief elected official summarizing the UGLG's review, determination and basis of the determination regarding the potential conflict of interest;
- the legal opinion letter from the UGLG's legal counsel certifying that the UGLG's contracting with the entity or person identified as having the potential conflict(s) would not violate state or local law;
- proof of proper notice of the public meeting in which the potential conflict of interest will be publicly disclosed and discussed;
- the agenda and minutes of the public board/council/committee meeting in which the potential conflict of interest was disclosed and reviewed;
- proof of public sharing of the meeting proceedings (e.g., proof of public posting(s), website posting, and/or publication in the newspaper, etc. of the meeting minutes), following local policy for making minutes available to the public for public meetings.

13. DEHCR will review the documentation submitted by the UGLG for the potential conflict of interest review and make a determination of whether the Division concurs with or disagrees with the UGLG's determination.

14. If the UGLG's determination *or* the legal opinion *or* DEHCR's opinion after reviewing the potential conflict of interest is that a conflict of interest *does* exist, then the UGLG cannot award the contract without a waiver. The UGLG may request a waiver to the federal conflict of interest provisions to award the contract by submitting to DEHCR:

- a request on municipal letterhead signed by the chief elected official requesting a waiver to the federal conflict of interest provisions, with a summary of the UGLG's review and determination regarding the conflict of interest, and the justification or basis on which the waiver should be allowed, citing all applicable factors for to be considered from the list provided in the federal regulations [[24 CFR 570.489\(h\)\(5\)](#)] (*Attachment 3-C: Conflict of Interest Clause*).
- the legal opinion letter from the UGLG's legal counsel stating that the interest for which the exemption is sought and awarding the contract would not violate state or local law;
- proof of proper notice of the meeting in which the potential conflict of interest will be publicly disclosed and discussed;



- the agenda and minutes of the board/council/committee meeting in which the conflict of interest was disclosed and reviewed; and
  - proof of public sharing of the meeting proceedings (e.g., proof of public posting(s) of the meeting minutes.
3. The UGLG should avoid signing the contract(s) in question until the exception/waiver decision has been issued by DEHCR (and HUD or other federal agency(ies) if applicable).

Please become familiar with the conflict of interest language included in the Code of Federal Regulations before undertaking any projects paid for with CDBG funds. For more information, please refer to the *24 CFR 570.489(h) Conflict of Interest Clause* (Attachment 3-C) provided in this chapter. This *Clause* must be inserted in all contracts for the CDBG project.

#### 4.0 IN-HOUSE WORK (BY MUNICIPAL/COUNTY EMPLOYEES)

Officials of the UGLG who are acting in their official capacity are considered in-house and are eligible to be compensated for CDBG related duties if certain conditions are met. For example, if the City Council has officially designated an attorney as City Attorney or an engineer as City Engineer, the individual or firm so designated becomes an official of the city. As an official of the city performing CDBG related duties, his/her legal or engineering service charges are eligible program costs to the extent that:

- They are reasonable for the services provided;
- They follow an appointment made in accordance with state and local laws; and
- The amount of compensation charged to the program will be based on payrolls documented and provided upon request in accordance with generally accepted practices of state and local governments, such as time sheets and other payroll records.

DEHCR will disallow costs for UGLGs that abuse these in-house provisions. For instance, appointments of City Engineers must not be made for the purpose of selecting an engineer to work on an anticipated project. The UGLG must show evidence that they have a history of appointment, unrelated to any current or anticipated grant funded project.

Refer to Chapter 8: *Financial Management* of this Handbook for details on in-kind donated goods and services. In-kind donated goods and services are tracked differently than in-house work.

## 5.0 PROCUREMENT AND CONTRACTING GENERAL PROVISIONS

The federal standards for procurement and contracting are intended to ensure that supplies, equipment, construction, and other services are:

- Obtained as efficiently and economically as possible; and
- Procured in a manner that provides, to the maximum extent practical, open and free competition.

Contract solicitations for goods and/or services must explain all requirements the bidder/offeree must meet for his or her bid/offer to be evaluated by the UGLG. Each solicitation must be based on a clear and accurate description of the material, product, or service to be procured and cannot contain features which unduly restrict competition.

Some of the situations considered to be restrictive to competition include but are not limited to:

- Placing unreasonable qualifying requirements on firms;
- Requiring unnecessary experience or excessive bonding;
- Specifying only brand name products, instead of allowing an equal product;
- Non-competitive pricing practices between firms or affiliated companies; and
- Non-competitive awards to consultants on retainer contracts.\*

*\*Non-competitive awards to professional services contractors may be allowed when no CDBG funds will be applied to the costs, subject to compliance with the UGLG's local procurement policy, or when Sole Source requirements listed later in this chapter are met. However, competitive procurement for all contracting is recommended, even when not required.*

Awards are to be made to the bidder/offeree whose bid/offer is responsive to the solicitation and is most advantageous to the UGLG, price and other factors considered, as permitted for the method of procurement being applied. All bids/offers may be rejected when it is in the UGLG's interest to do so. The UGLG must ensure that contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Considerations may include but are not limited to compliance with regulatory requirements and public policy, contractor integrity, record of past performance, financial capabilities, and technical capabilities.

## 6.0 DEBARRED AND INELIGIBLE CONTRACTORS

The UGLG must ensure that awards are not made to any party which is debarred or suspended, or is otherwise excluded from or ineligible for, participation in federal assistance programs under Executive Order 12549 "Debarment and Suspension" [[2 CFR](#)

[180](#) and [2 CFR 200.214](#)]. The UGLG must check the “exclusion” (i.e., debarment) status of all contractors and subcontractors on the System for Award Management (SAM) at <https://sam.gov/content/home> **prior to the award** of any prime contract or subcontract and prior to the amendment of any prime contract or subcontract. Debarment checks must be made on the *official* federal SAM website. Private third parties have created sites that look very similar to the [SAM.gov](#) website, but they are not the *official* federal site and must not be used for SAM debarment checks for the CDBG program. The UGLG must also maintain a record of the debarment checks in the CDBG project file.

## 7.0 USE OF LOCAL, SMALL, MINORITY-OWNED AND/OR WOMAN-OWNED BUSINESSES

Federal and state regulations specify that Grantees/UGLGs should ensure that small businesses, minority-owned business enterprises (MBEs), woman-owned business enterprises (WBEs), veteran-owned business enterprises (VBEs)/disabled veteran businesses (DVBs) [refer to [Wis. Stat. 16.283\(1\)\(b\)](#), [Wis. Admin. 82.22](#), and [Wisconsin DVB program](#)], and labor surplus area firms [refer to the [U.S. Department of Labor – Labor Surplus Area list](#)] are considered for contracting opportunities for federally assisted projects [[2 CFR 200.321](#)]. This means:

- including these business types in solicitation lists;
- soliciting these business types whenever they are deemed eligible as potential sources;
- dividing procurement transactions into separate procurements to permit maximum participation by these business types; and
- requiring prime contractors for the federally assisted project to apply this guidance to subcontracts.

Refer to Chapter 6: *Equal Opportunity, Fair Housing and Section 3* of this Handbook for additional details on MBE/WBE contracting related requirements.

## 8.0 USE OF SECTION 3 BUSINESSES

In conformance with requirements of Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, the UGLG must award contracts for work to be performed to eligible businesses located in or owned by residents of the distribution area to ensure that employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing [[24 CFR 570.607](#) and [24 CFR 75](#)].

Refer to Chapter 6: *Equal Opportunity, Fair Housing and Section 3* and Chapter 9: *Reporting* of this Handbook for additional details on Section 3 contracting related requirements.

### IMPORTANT NOTE!

The desire to award contracts to local firms is **NOT** an acceptable justification for avoiding an open and competitive procurement process and encouraging participation of MBE/WBE firms and Section 3 firms in competing for contracts for the CDBG project.

## 9.0 LOBBYING RESTRICTIONS

In accordance with Section 1352, Title 31, U.S. Code, no CDBG funds may be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than CDBG or other federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the CDBG contract, the UGLG or contractor representative shall complete the federal Standard Form-LLL in accordance with the instructions. This form is provided as *Attachment 3-E: Disclosure of Lobbying Activities* in the chapter attachments.

The UGLG and all subrecipients, developers, prime contractors and subcontractors (including any contracted for construction, professional services and other non-construction activities, such as engineering and grant administration) for the CDBG project must include *Attachment 3-D: Lobbying Certification* and *Attachment 3-E: Disclosure of Lobbying Activities* in all contracts they execute for the CDBG project or provide them to the contracting entities as separate contract attachments. All sub-awardees/subrecipients, developers, prime contractors and subcontractors at all tiers shall complete, sign and date the certification form (and disclosure form if they have lobbying activities to disclose). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The UGLG/Grantee must:

1. Obtain the signed *Lobbying Certification* forms (and *Disclosure of Lobbying Activities* forms, if there are activities to disclose) from the entities at the time of contracting or upon the entity starting work on the CDBG project;
2. Maintain the signed forms in the project file; and
3. Submit the forms to DEHCR with the *Project Completion Report* documents, during monitoring and/or another time during the project performance period if requested by DEHCR, HUD or other regulating entities.

## 10.0 BUILD AMERICA, BUY AMERICA (BABA) REQUIREMENTS

The Build America, Buy America (BABA) Act, 41 USC § 8301 was enacted in the Infrastructure Investment and Jobs Act on November 15, 2021. The Buy America, Build America (BABA) requires that products purchased in connection with infrastructure projects funded by Federal financial assistance (FFA) programs must be produced in the United States (U.S.). This requirement is known as the “Buy America Preference (BAP)” (or “domestic procurement requirement”). The purpose of the BABA is to stimulate private sector investments in American manufacturing, bolster critical American supply chains, and support the creation of jobs so that America’s workers and firms can compete and lead globally.

The UGLG, prime contractors, and subcontractors (all tiers) must comply with the BAP and all applicable rules and notices, as may be amended, for any infrastructure project receiving CDBG funding and/or any other FFA unless a waiver or exemption of BABA applies to the project. Pursuant to HUD’s guidance, any funds obligated by HUD on or after the applicable listed effective dates are subject to the BAP, unless exempted by a waiver.

HUD guidance resources include:

- *HUD BABA website: <https://www.hudexchange.info/programs/baba/>;*
- *HUD Notice CPD-2023-12: 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); and*
- *HUD Notice CPD-2025-01: CPD Implementation Guidance for the Build America, Buy America Act’s Buy America Preferences.*

Unless the project or purchase qualifies for a waiver or exemption, the BAP requirement is in effect and applicable for the State of Wisconsin Department of Administration (DOA) Division of Energy, Housing and Community Resources (DEHCR) – Bureau of Community Development’s CDBG Small Cities Program infrastructure projects that were/are:

- awarded on or after January 1, 2023 that contain iron and/or steel materials;
- awarded on or after January 1, 2024 that contain construction products specifically listed in *88 FR 17001*; and

- awarded on or after January 1, 2025 that contain construction materials not specifically listed in [88 FR 17001](#), and/or contain manufactured products.

Grantees and construction contractors subject to the BABA Act must maintain records that verify compliance with the BAP requirement, as listed in the compliance documentation section below, and provide them to DEHCR, HUD, and/or other regulating entities if specified and upon request.

### Compliance Documents

- *Attachment 3-J: CDBG Build America, Buy America (BABA) Requirements (Contract Insertion)*
- *Attachment 03-K: CDBG BABA Project-Specific Waiver Request Form*
- *Attachment 03-L: Contractor/Purchaser BABA Compliance Self-Certification*
- *Attachment 03-M: Contractor/Purchaser BABA Covered Materials List*

Guidance is also provided in *Attachment 03-N: BABA Documents & Requirements*.

All chapter attachments are available on the DEHCR [CDBG Implementation Handbook](#) website under the “Chapter Attachments/Fillable Forms” section.

### Applicability

The BABA Act – BAP requirement applies to infrastructure projects that:

- were awarded CDBG funds from DEHCR in or after 2023, except those qualifying for exemption or waiver; ***and***
- contain the use of iron or steel, construction materials, and/or manufactured products; ***and***
- have a total cost of greater than \$250,000 (including federal and non-federal funds).

### BABA Definitions

Definitions of terms that have relevance to the interpretation and implementation of the BAP for CDBG are defined in the BABA statute and may be found in HUD Notice [CPD-2023-12](#), [CPD-2025-01](#), [2 CFR 184](#), and [OMB M-24-02](#) guidance. Key term definitions are also provided below.

- **Infrastructure project:** any project that includes any of the following activities, regardless of whether infrastructure is the primary purpose of the project ([2 CFR 184.3](#)):
  - construction,
  - alteration (including demolition, rehabilitation, renovation, redevelopment, etc.),

- maintenance, or
- repair.
- Infrastructure:
  - buildings and real property (including housing),
  - utilities,
  - water systems (drinking water and wastewater),
  - electrical transmission facilities and systems,
  - broadband infrastructure, and
  - transportation infrastructure.
- Component: an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product; or, where applicable, an iron or steel product.
- Construction materials: articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of the definition shown below, except as provided in paragraph (2) of the definition shown below:
  - (1) The listed items are:
    - non-ferrous metals (i.e., metals other than iron and steel)
    - plastic and polymer-based products (including polyvinylchloride (PVC or vinyl), composite building materials, and polymers used in fiber optic cables);
    - glass (including optic glass);
    - fiber optic cable (including drop cable);
    - optical fiber;
    - lumber;
    - engineered wood; and
    - drywall.
  - (2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.
- Iron or steel products: articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.
- Manufactured products: articles, materials, or supplies used for an infrastructure project that:
  - are not iron or steel products; or
  - have been processed into a specific form and shape; or



- are combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies (i.e., when two or more materials are combined, they should be treated as a manufactured product).

## General Waivers and Exemptions

In accordance with the provisions of the HUD-issued general waivers, BABA ***does not apply*** to the following:

- **Pre-2023 Awards:** Projects awarded CDBG funds from DEHCR prior to 2023 (*contingent upon the project not being funded with other federal funds that are subject to BABA*);
- **Non-Infrastructure Projects:** Projects that are not infrastructure projects (e.g., Planning (PLNG), Public Services (PS), Economic Development (ED) loan assistance-only, etc.);
- **Housing Infrastructure Projects Involving Less Than 5 Units:** Projects involving housing infrastructure improvements for less than five (5) living units;
- **Projects with \$250,000 or Less in Costs:** Projects with a *total* cost of \$250,000 or less (including all federal and non-federal funds);
- **Emergency Assistance Projects:** Projects that qualify for waiver under the “emergency and safety assistance” clause of BABA, including CDBG-DR, CDBG-CV, ESG-CV, CDBG-MIT, and DEHCR FFP projects (*contingent upon the project not being funded with other federal funds that are subject to BABA*) [NOTE: ARPA funded projects ***are*** subject to BABA ***unless*** they qualify under another exemption or waiver.];
- **De minimus Cost Amount:** Up to five percent (5%) of the *total* cost of *all* covered materials (i.e., *all* iron, steel, manufactured products, and construction materials, regardless of their status under HUD’s phase-in waiver provisions) used in and incorporated into the infrastructure project may be exempted from BABA-BAP requirements (up to a *maximum* of \$1 million), contingent upon CDBG Grantee/UGLG and DEHCR approval]; and
- **Projects with No Covered Materials:** Projects that will not be incorporating any iron, steel, construction materials, or manufactured products in the project scope.
- **Projects Qualifying under the HUD Phased Implementation General Waiver:** Refer to the section that follows.

### **HUD Phased Implementation General Waiver Provision:\***

In accordance with HUD’s phased implementation plan for BABA for the program and the terms of general waivers, the specification for iron and steel, manufactured products, and production materials purchased for infrastructure projects funded with a CDBG award from DEHCR (i.e., the Wisconsin State CDBG Small Cities Program) to be produced in the



U.S. (unless another waiver or exemption applies) is only in effect and required on or after the dates listed in the summary that follows.

Category:	Grantees/Projects Subject to BABA:
Iron and steel products	Grant Award on or after 1/1/2023
Construction materials specifically listed in <a href="#">88 FR 17001</a>	Grant Award on or after 1/1/2024
Construction materials <i>not</i> specifically listed in <a href="#">88 FR 17001</a>	Grant Award on or after 1/1/2025
Manufactured products	Grant Award on or after 1/1/2025

*\*Other federal funding agencies may have different implementation plans with different phase-in dates. UGLGs, subrecipients, and contractors are required to meet the BABA requirements of all federal funding sources for the project.*

### Project-Specific Waivers

Waivers explained in HUD Notice [CPD-2023-12](#), [OMB M-24-02](#), and [CPD-2025-01](#) are required by the Infrastructure, Investments and Jobs Act (IIJA) sections 70901 through 70952 for exceptions not otherwise exempt to the BAP.

In addition to the general waivers, project-specific waivers may be granted for projects for which the BAP would otherwise apply. There are three (3) categories of project-specific waivers, including the following:

1. **Public Interest:** The BAP would be inconsistent with the public interest.
2. **Nonavailability:** Covered materials are not produced in the U.S. 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%.

*Attachment 3-K: CDBG BABA Project-Specific Waiver Request form* (linked on the DEHCR [CDBG Implementation Handbook](#) website) must be completed and submitted with the required supporting documentation, following the instructions on the form, for project-specific waiver consideration. A contractor, subrecipient, or grantee/UGLG seeking a project-specific waiver must demonstrate the criteria for one or more of the project-specific waiver categories are met.

The contractor or subrecipient must submit waiver request documentation to the Grantee/UGLG, and the Grantee/UGLG must verify that it is complete and submit it to DEHCR. DEHCR will review the documentation and if it is confirmed to be complete and in compliance, will submit the required waiver request information and additional documentation to the appropriate HUD representative for further review and processing. A waiver must be approved by DEHCR, HUD, and the federal [Made in America Office](#) (MIAO) prior to an entity using construction items subject to the BAP for the grant funded project that are not produced in the U.S. *[Note: The waiver request review process includes a*

*public notice requirement and the issuance of a decision by HUD and the MIAO may require six (6) weeks or more.]*

If the project is funded with multiple Federal funding sources, to avoid duplicative waiver requests, the Grantee/UGLG and DEHCR are to coordinate with the “Cognizant Agency” (i.e., the entity contributing the greatest amount of Federal funds to the project) to process the waiver request. The Cognizant Agency is responsible for consulting with the other Federal agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to the MIAO.

### **BABA Contracting Requirements**

- *Attachment 3-J: CDBG Build America, Buy America (BABA) Requirements (Contract Insertion)* (linked on the DEHCR [CDBG Implementation Handbook](#) website), must be included in all contracts with prime contractors and subcontracts for projects subject to the BABA Act and BAP requirement.
- *Attachment 3-L: Contractor/Purchaser BABA Self-Certification and Attachment 3-M: Contractor/Purchaser BABA Covered Materials List* or a document with the same information (attachments linked on the DEHCR [CDBG Implementation Handbook](#) website) must be completed and signed by all construction prime contractors and subcontractors upon contract award, and any other purchasers of covered materials (e.g., the CDBG Grantee/UGLG, subrecipients), as applicable, at the time of purchase.
  - A prime contractor’s signed certifications and covered materials lists must be submitted by the CDBG Grantee/UGLG to DEHCR with the Notice of Contract Award.
  - A subcontractor’s certification and covered materials list are to be completed and submitted with their first payment application to the prime contractor; the prime contractor is to submit them with their payment applications to the Grantee/UGLG; and the Grantee/UGLG is to submit them to DEHCR with grant payment requests.
  - Other purchasers’ signed certifications and covered materials lists are to be completed at the time of purchasing and submitted to DEHCR by the Grantee/UGLG with grant payments requests.
  - Prime contractors, subcontractors, and other purchasers are to submit updated copies of the covered materials list with their payment applications, if/when materials are added to the original list. The updated lists are to be submitted to DEHCR by the Grantee/UGLG with grant payment requests.
  - A covered materials list may need to be submitted multiple times by the same contractor/purchaser if/when additional materials not initially reported are required for the project.

- The CDBG Project Budget with total project costs and all contract budgets (e.g., detailed bids and contractor payment applications) with the detailed contract costs, which show the costs of Covered Materials being used on the CDBG project (including costs per unit) are required. These data are reported on the Covered Materials list.

Also refer to *Attachment 3-N: Summary of BABA Documents & Requirements* (available on the DEHCR [CDBG Implementation Handbook](#) website) for guidance.

### **Other BABA Documentation:**

Other BABA supporting documentation must be maintained by contractors and other purchasers that serves as verification of the information provided in their Covered Materials list, and provided upon request. Examples include:

- Project or product waiver documentation, if applicable (this waiver documentation must also be submitted to DEHCR by the Grantee/UGLG at the time of the waiver request);
- Country of origin documentation, such as:
  - A copy of the label indicating the product was made in the United States; and/or
  - A copy of the manufacturer's product description or technical specifications information that provides sufficient detail of country of origin; and/or
  - Certification or other documentation from the manufacturer demonstrating compliance;
- Country of origin search results documentation, such as:
  - Copies of web searches used (e.g., PDF/JPEG copies of web pages showing search terms and results including sources considered, eliminated, and chosen for further research),
  - Results of National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP) identifying domestic manufacturers;
  - Copies of email, fax, or mail correspondence with Covered Materials manufacturers or suppliers; and
  - Phone communication records for calls with Covered Materials manufacturers or suppliers, including:
    - Dates and times of phone calls,
    - Phone numbers used,
    - Results of the phone communication (whether the phone communication was successful in reaching a manufacturer or supplier representative to receive answers to questions about BABA compliance, or whether the attempted communication was unsuccessful (e.g., left a message, phone line was busy, or phone line was disconnected),

- Name of person reached (if talked to someone), and
- Notes describing the substances of the conversation.

The list of BABA documentation examples are also provided in the “BABA Documentation Required” tab within *Attachment 3-M: Contractor/Purchaser Covered Materials List*.

## 11.0 CONTRACTING FOR PROFESSIONAL SERVICES

### **Use of One Firm for Grant Administration and Professional Services such as Engineers, Planners or Architects**

The use of a single firm for grant administration and engineering and/or planning professional services is generally acceptable provided that *separate* procurement and contracting processes are conducted for each of the separate services.

**A firm is not allowed to bid on or compete for a contract for services if the firm assists the UGLG with preparation of the procurement advertisement or assists in any aspect of the procurement process**, as this presents a conflict of interest that gives an unfair advantage to the firm. Assistance with the procurement process includes but is not limited to the preparation of advertisements and/or RFPs/RFQs/RFBs for the services contract, or the evaluation and scoring of bids/proposals for the services contract.

### **Selection of Engineers, Planners or Administrative Consultants Prior to Grant Award**

Generally, the use of multi-services procurement and contracting is prohibited except:

- When local officials decide to procure the services of an engineer to assist them with both preparation of preliminary engineering plans (which may be prior to grant application) **and** project engineering (during the project) in the event their community is selected for grant award;
- When an UGLG wants to conduct one procurement process to cover both grant preparation **and** grant administration; and
- When an UGLG wants to conduct one procurement process to cover both CDBG-Planning (CDBG-PLNG) grant application preparation **and** CDBG-Planning (CDBG-PLNG) grant implementation.

Any agreement between the UGLG and the engineer or consultant that includes preliminary and project engineering, or grant writing/application preparation and grant administration services, should include language in the agreement indicating that it is contingent upon the award of CDBG funds if this contingency applies.

The UGLG must meet federal competitive procurement requirements when CDBG funds are being applied to the professional services contract costs.

Additional requirements the UGLG must take into consideration when procuring professional services, include:

- No loss-leader arrangements; and
- Types of professional service(s) needed for the CDBG project (for engineering, grant administration, planning, etc.).

Loss-leader arrangements violate federal regulations which require maximum open and free competition. Professional organizations also consider this practice unethical because it deprives the UGLG of the benefits that can result from competition among competent, professional firms.

**WARNING!**

**No loss-leader arrangements:** Federal regulations require maximum open and free competition. Loss-leader arrangements, in which a consultant offers to prepare a grant application or preliminary engineering estimates at reduced rates or at no cost *in return for* a future contract if the application is funded, are prohibited by federal regulations.

## 12.0 PROCUREMENT METHOD OPTIONS

Depending on the type of the contract, scarcity of the item or service desired, and the amount of the contract or purchase, four (4) different options for procurement methods are available under the federal regulations:

- Small purchase(s)/simplified acquisition option;
- Competitive sealed bids option;
- Competitive proposals option; and
- Non-competitive proposals/sole source option.

These procurement method options are summarized below.

*Guidance is also provided in Attachment 3-F: Overview of Procurement Method Options.*

### **OPTION #1 – SMALL PURCHASE/SIMPLIFIED ACQUISITION & MICRO-PURCHASE OPTION [2 CFR 200.320(a)]**

DEHCR considers procurement by small purchase (also referred to as simplified acquisition) procedures best suited for obtaining small quantities of goods/products/supplies. UGLGs are to comply with their local, the state, or the federal policies

and regulations for small purchase/simplified acquisition; following *whichever is most restrictive* when there are differences among them.

The federal regulations allow for the small purchase/simplified acquisition method for the procurement of a good/service/supply/product that in aggregate totals \$250,000 or less for the CDBG project (per [2 CFR 200](#) [specified in [2 CFR 200.88](#), [2 CFR 320](#) and the [OMB update letter to federal agencies 6/20/18](#)]). The **state** requirements have been changed to be consistent with federal regulations for *non-construction* purchases/contracting, now specifying that the small purchase/simplified acquisition method is allowed for the procurement of a good/service/supply/product that in aggregate totals **\$250,000 or less for non-construction contracts/items, or \$25,000 or less for a construction contract for the CDBG project** (*with the exception of professional services contracting, for which a competitive proposal procurement method is allowed, regardless of the contract amount.*)

The Simplified Acquisition method includes a **micro-purchase** provision allowing UGLGs to make purchases of **\$10,000 or less** without soliciting competitive quotations if the UGLG considers the price to be reasonable. Because a cost-price analysis is required for all procurement and purchasing transactions under [2 CFR 200.324](#), however, some type of documentation must be on file as verification that the price is reasonable.

The State's CDBG program requirements must be followed, or the UGLG's local policy if it is more stringent. **A procurement/purchase of an item may not be inappropriately broken up into smaller components solely to qualify for the small purchase/simplified acquisition approach.**

#### NOTICE!

The Wisconsin CDBG Program cost threshold for using the small purchase/simplified acquisition procurement method is consistent with 2 CFR 200.320 (the Uniform Guidance) and Wisconsin State Statutes, including the following thresholds:

**\$250,000 for a non-construction item/contract\*** or  
**\$25,000 for a construction contract.\*\***

The provision for **micro-purchases of \$10,000 or less** allows for purchasing/contracting without soliciting competitive quotations if the UGLG considers the price to be reasonable.\*\*

*\*Professional services may be procured using the competitive proposal procurement method, regardless of contract amount.*

*\*\*These provisions are allowed, contingent upon the UGLG also complying with local procurement policy requirements.*

In the small purchase method, competitive procurement is achieved through obtaining written price quotations. **The UGLG must document the request for the quotes and the receipt of at least three (3) price or rate quotations from qualified providers/vendors (except for micro-purchases of \$10,000 or less, as noted later in this section of the chapter).** The UGLG's small purchase/simplified acquisition procurement process documentation is to include:

- Correspondence with providers/vendors in which the request for quotes was made, including:
  - the vendor/provider information, including the company/firm/organization name, address, and their email address and/or phone number (whichever method(s) was/were used to contact the vendor/provider);
  - the solicitation email(s) and/or letter(s) used to request the quotes from providers/vendors (***the solicitations must be in writing, with the exception of micro-purchases, summarized later in this chapter, or when obtaining quotes online from website sources***);
  - a description of the good/service/product/supply to be purchased/procured, as presented in the requests for quotes;
  - the price quotes in writing from the providers/vendors for the quantity of the item sought (which must be the same for all quotes, comparing pricing for the same quantity of the item);
  - and the date of the quote as well as an expiration date for the quote if applicable (i.e., if a price quote is only valid for a limited number days, then this must be specified in the quote or in follow up email/written correspondence between the solicitor and the provider/vendor, and this documentation must be retained in the procurement file for the CDBG project).

Or, if obtaining the quotes **online through website sources**, then the following documentation must be on record:

- the printed record of the source of the quote with the specific website address and date of accessing the website shown (a website "link" is insufficient, given weblinks and website addresses can change – the printed/PDF record of the page where the information and web address appear must be on file), as record of the source and to verify the quotes were obtained in the same time period;
- the vendor/provider contact information as listed on the website;
- the details of the specific item(s) and quantity sought, as verification that the price comparisons are for comparable items and specifications.



*[Note: The request for quotes must include enough detail to solicit responses that will provide adequate information to verify that the quotes are for comparable products or services and of the same quantity. The online quote records must include enough detail to verify the price comparisons are for comparable products or services of the same quantity. Having a quote that is for a quantity of one of an item and having another quote that is for a quantity of 2 or more for an item is not acceptable. Having some quotes with the applicable shipping, handling, delivery and/or installation costs included and other quotes without those costs included may deem the quotes invalid. All price quotes obtained should include all costs associated with the purchase. An exception may be considered if one price quote, which has all applicable shipping, handling, delivery, and installation costs included, is already confirmed to be lower than the other price quotes obtained for items with the same product specifications and quantities but that do not have the shipping, handling, delivery, and installation costs included.]*

- Record of the cost/price analysis conducted, including the pricing information or quotes collected/documented;
- Record of written notifications given to each vendor/quote responder in writing, indicating whether they were or were not selected as the lowest responsive, responsible quote submitter for the contract or good/service/product/supply (which is only required if the quotes were solicited through direct communication with the providers/vendors); and
- The executed contract (if for construction or other services) or other written purchase agreement record (for goods/products/supplies) with the lowest responsible quote provider/vendor (or terms of sale and delivery and invoice/receipt for a product purchased through obtaining quotes online).
- **Micro-Purchase Exception:** If the cost of the good/product/service (including the total quantity needed for the CDBG project) will total less than \$10,000, then a cost-price analysis should be made but obtaining written competitive quotations is not required to meet CDBG requirements\* if the UGLG considers the price to be reasonable (consistent with the principles in [2 CFR 200.404](#)). Records of cost comparisons and/or other documentation that the UGLG used as the basis for deeming the cost to be “reasonable” must be on file.

*\*This exception is allowed contingent upon the UGLG complying with its own local procurement policies.*

## **OPTION #2 – COMPETITIVE SEALED BID OPTION [2 CFR 200.320(b)(1)]**

DEHCR considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials. The competitive sealed bid procurement method must be used by an UGLG for any prime construction contract that will exceed \$25,000 and a non-construction contract and/or a



good/product/supply purchase that in aggregate will exceed \$250,000 for the CDBG project (*excluding professional services contracts, for which a competitive proposal process may be used, regardless of contract amount*).

This method of selection is to be made principally on the basis of price (fixed price contract using lump sum or unit price). Requirements for using the Competitive Sealed Bid method are as follows:

- The UGLG shall advertise the invitation for bids in publications of general circulation (i.e. newspapers, on-line bidding opportunities), solicit bids from an adequate number of known suppliers, providing them with sufficient time to respond prior to bid opening;
- The UGLG shall comply with the advertisement for bids requirements set forth in the [Wis. Stat. 62.15\(3\)](#) for UGLGs for public works projects, including publishing a class 2 notice in accordance with [Wis. Stats. ch. 985](#).
- The advertisement for bids shall include:
  - complete and accurate specifications
  - pertinent attachments, and
  - clearly defined items or services needed, in sufficient detail for the bidders to properly respond;
- UGLGs may refer to the *Attachment 7-F: Advertisement for Bids* template provided as an attachment to *Chapter 7: Labor Standards* in the [CDBG Implementation Handbook](#) for guidance.
- Refer to Escalator Clauses in [Wis. Stat. 62.15\(1a\)](#), in providing for additional charges for labor and materials, if as a result of general inflation, the rates and prices of the same to the contractor increase during performance of the contract. Such escalator provision shall be applicable to all bidders and shall not exceed 15% of the amount of the firm bid nor the amount of the increase paid by the contractor. Each bid on a contract that is to include an escalator provision shall be accompanied by a schedule enumerating the estimated rates and prices of items of labor and materials used in arriving at the bid. Only as to such items as are enumerated shall an increased charge be allowed the contractor.
- Refer to Bonding specifications in [Wis. Stat. 779.14](#) and the bonding requirements specifically for “local government contracts” for “a public improvement or public works” in Wis. Stat. [779.14\(1m\)\(d\)](#).
- Refer to Attachment 3-I: *Contract Language/Insertions Summary* for the CDBG language and insertions required to be in the construction bid packet, prime contract and subcontracts. Also refer to *Chapter 7: Labor Standards* in the [CDBG Implementation Handbook](#) for additional guidance on construction bidding and contracting.

- Bids shall be opened publicly at the time and place stated in the invitation for bids;
- The UGLG shall receive at least two (2) or more responsible bids for each procurement transaction; and
- If awarded, a firm fixed-price contract award shall be made in writing to the lowest responsible bidder. The UGLG can, however, decide not to make the award to any of the bidders. The UGLG may re-bid the project under certain conditions (i.e. bids are not responsible, or the proposals do not contain information necessary to evaluate the bids).

#### **NOTICE REGARDING BIDDING FOR MULTIPLE UGLG PROJECTS:**

An UGLG may bid the CDBG project in conjunction with another non-CDBG project for economy and efficiency purposes, contingent upon the CDBG project components being clearly defined separately and the component costs being clearly distinguishable and separate from the non-CDBG component costs in the bid. Future pay applications/invoices from the contractor(s) awarded contract(s) must have CDBG project activities and costs clearly separated from the non-CDBG project activities and costs on the pay application/invoices.

Also note that federal regulations specify that a contract funded “in whole or in part” with federal funds must adhere to all federal procurement, contracting and labor standards requirements. Therefore, if one contract covers both CDBG project activities and non-CDBG project activities, then the contract is ultimately funded “in part” with federal funds. Therefore, the non-CDBG portion of the contract would be subject to federal labor standards requirements, in addition to the CDBG portion of the contract. All contract regulatory language and attachments required for bidding for CDBG projects must be included in the bid packet and contract.

#### **NOTICE REGARDING BIDDING THAT RESULTS IN A SOLE BIDDER:**

A minimum of two (2) bids is generally required when selecting a contractor through the open bidding process. When there is a sole bidder, DEHCR requires that the project be rebid to attempt to obtain additional bids, or that justification be submitted for DEHCR’s review and approval *prior to* awarding the contract to a sole bidder.

The following must be submitted to DEHCR for consideration of an exception *prior to* awarding a contract to a sole bidder (whether it is a result of the initial bidding process or after a second bidding process):

1. A copy of advertisement for bids with the publisher’s affidavit of publication that verifies that the grantee used an open/public sealed bidding process following State Statutes (General and Counties: [Wis. Stat. 66.0901](#); Cities and other UGLG types (and

potentially grantee subrecipients, depending on the nature of the subrecipient organization): [Wis. Stat. 62.15\(1\)](#)); and CDBG requirements (in the [CDBG Implementation Handbook](#); and [2 CFR 200.320\(b\)\(1\)](#)), including appropriate notice for the bid advertisement, etc. [The advertisement for bids must allow for reasonable time for potential bidders to respond. Generally, a minimum Class 2 notice must be given in accordance with [Wis. Stats. ch. 985](#) (to comply with [Wis. Stat. 62.15\(3\)](#) for Public Works – Advertisement for Bids). Providing 30 days for a response is a best practice.]; **and**

2. An email from the UGLG confirming the documents specified in the [CDBG Implementation Handbook](#) as required for the construction contract/bid packet were included in the bid packet; **and**
3. A copy of the sole bidding contractor’s detailed bid;
4. A request from the UGLG (an email or signed letter) with a brief justification for awarding the contract to the single bidder, stating **all** circumstances and/or conditions that have led the grantee to determine that re-bidding the project would not serve the public’s best interest, as it would:
  - i. not render a different result (i.e., more bids and/or lower bids), providing an explanation; and/or
  - ii. cause undue hardship due to the need for completing the scope to meet public needs within a certain time period; and/or
  - iii. restrict timeliness of project completion; and/or
  - iv. not serve the public’s best interest for one or more other reasons (state the other reason(s); **and**
5. A copy of a legal opinion from legal counsel (an email or signed letter) that verifies that the UGLG awarding the contract to the sole bidder complies with local and state laws for bidding and contracting for UGLG public works projects.

#### **NOTICE REGARDING BID PACKET OMISSIONS AND/OR ERRORS:**

If the UGLG does not ensure all the applicable required CDBG language and insertions, as summarized in Attachment 3-I: *Contract Language/Insertions Summary*, are in the bid packet or if the incorrect wage decisions were included in the bid packet, the UGLG may be required to repeat the bidding process for the contract. Contact the assigned DEHCR project representative to determine the implications and next steps to address the omission(s) and/or error(s).

Refer to Chapter 7: *Labor Standards* of this Handbook for additional guidance on procurement and contracting for construction contracts.

#### **OPTION #3 – COMPETITIVE PROPOSALS OPTION [2 CFR 200.320(b)(2)]**

DEHCR considers this procurement method best suited to obtaining professional services.

This is normally conducted with more than one source submitting an offer, which results in either a fixed-price or not-to-exceed type contract being awarded. It is generally used when conditions are not appropriate for the use of sealed bids. This method has two sub-parts:

1. The **Request for Proposals** (RFP), and
2. The **Request for Qualifications** (RFQ).

The review process for both statements of qualification and proposals should be thorough, uniform, and well documented. DEHCR prefers that this review be conducted by a committee, council or board which, to the extent possible, includes persons with technical skills relevant to the requests being sought.

Reviewers should have no potential conflicts of interest with the firms or individuals under review, such as family relationships, close friendships, or business partnerships. Refer to [2 CFR 200.320\(b\)\(2\)](#) procurement standards, which in part states: *UGLGs and sub-Grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the UGLG or sub-Grantee shall participate in the selection, or awarding, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.*

**Evaluation criteria** for reviewing competitive proposals should take into consideration:

- 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 municipality and other clients, including quality of work, timeliness, and cost control;
- Capacity of the firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm; and
- Familiarity of the firm with the type of problems applicable to the project.

#### RECOMMENDED BEST PRACTICE

The above-listed evaluation criteria can be scored using a weighted point system based on their importance. A side-by-side comparison of the numerical scores will determine which proposal receives the award.

#### Request for Proposals (RFP)

Guidance and requirements for using the RFP procurement method:

- The *Request for Proposals* (RFP) must clearly and accurately state technical requirements for goods and services required. It should specify scope of services

and the type of contract to be provided – cost reimbursement (also known as cost plus fixed fee), fixed price or per diem contract;

- The RFP also should specify the cost and pricing data required to support the proposed cost, anticipated start and completion dates, and evaluation criteria to be used in ranking proposals. The UGLG should make available pertinent materials, such as reports, maps and site plans to assist the bidders in preparing proposals. For complicated projects, the UGLG may wish to conduct a pre-bid conference to discuss the project, describe available materials and explain relevant CDBG contract regulations;
- The UGLG shall publicize the RFP (making the RFP publicly available, e.g., posting on the UGLG's website, publishing in the newspaper, posting on one or more professional association website(s), etc.) and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;\*
- Proposals shall be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement;
- The UGLG shall conduct a technical evaluation of the submitted proposals to identify the responsible offers;
- The UGLG shall award the contract to the most responsive, responsible contractor after price and other factors are considered through scoring the proposals according to the predetermined evaluation criteria specified in the RFP - the successful proposal/offer must clearly be the most advantageous source of the goods and services; and
- The UGLG shall follow its local procurement policy(ies) in approving and executing the contract.

*\*The RFP may be sent to particular firms to encourage participation, in addition to making the RFP publicly available, but sending the RFP to the firms may not be in lieu of making the RFP publicly available.*

An optional *Request for Proposals (RFP) Template* is provided in *Attachment 3-G* as additional guidance.

### **Request For Qualifications (RFQ)**

For procurement involving architectural or engineering services, the UGLG may use the *Request for Qualifications (RFQ)* competitive proposal procedure whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **In these instances, price is generally NOT used as a selection factor.** The UGLG should review and rank every statement of qualifications received.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, this process is repeated with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The qualifications-based (RFQ) competitive proposals method may not be used to purchase anything other than architectural and engineering services [2 CFR 200.320(b)(2)(iv)].

Note: The federal rule cited in the previous paragraph, relating to the procurement of architectural and engineering (A/E) services, is quoted below verbatim:

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

This language means that the Qualifications-based Procurement Method can be used only for A/E services. If an RFQ is issued, the competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

In addition, federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by federal statutes, due to the resulting geographical restrictions unnecessarily placed upon open competition. However, in procuring architectural and engineering services, geographic location is permitted as a selection criterion provided this criterion results in an appropriate number of qualified firms still being allowed to submit their qualifications for review.

**WARNING!**

*A Request For Qualifications (RFQ) cannot be used to purchase other types of services, even though A/E firms are potential sources to perform other types of services.*

Guidance and requirements for using the RFQ procurement method:

- The *Request for Qualifications* (RFQ) must clearly and accurately state the qualifications submission content and format required;

- The RFQ also should specify relevant project details and evaluation criteria to be used in ranking qualifications submitted;
- The UGLG may invite specific firms (must be at least three (3)) to submit their qualifications and/or may publicize the RFQ – DEHCR recommends but does not require that the RFQ be advertised and made publicly available (e.g., posting on the UGLG’s website, publishing in the newspaper, posting on one or more professional association website(s), etc.); and recommends that the UGLG, to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;
- The UGLG shall conduct a technical evaluation of the submitted qualifications to select the firm(s) to move forward with additional information and contract negotiations;
- The UGLG shall award the contract on the basis of/with consideration for factors in the pre-established evaluation criteria set forth in the RFQ, and after satisfactory negotiations with the selected firm;
- The UGLG shall document the basis for its determination of the most qualified competitor and the reasonableness of the contract price; and
- The UGLG shall follow its local procurement policy(ies) in approving and executing the contract.

An optional *Request for Qualifications (RFQ) Template* is provided in *Attachment 3-H* as additional guidance.

#### **OPTION #4 – NON-COMPETITIVE PROPOSALS/SOLE SOURCE OPTION [2 CFR 200.320(c)]**

This method may be used only under very limited circumstances and **the UGLG must obtain DEHCR approval before using this method.** When requesting approval to use this method, the UGLG will have to demonstrate that another method of procurement was not feasible because:

- The item or service was only available from a single source;
- A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
- Competition was determined to be inadequate after solicitation of proposals from a number of sources.
- Refer to the guidance within this chapter regarding sole bidders when using the competitive bid procurement method.

A request for a sole source procurement requires documentation that demonstrates one or more of the criteria above is/are met. For sole source *construction* contracting, the items listed for “sole bidder” contracting within this chapter generally must be provided.



Some exceptions may apply. Similar documentation is required for *non-construction* sole source contracting. Typically, at least one and often two competitive procurement attempts must be made before sole source contracting would be considered for approval by DEHCR. Contact the assigned DEHCR Project Representative for additional guidance.

## 13.0 SUBRECIPIENTS

A subrecipient is a public or private non-profit agency or organization receiving CDBG funds from a UGLG or another subrecipient to undertake eligible activities. Another way to say this is that subrecipients are organizations that are **provided** CDBG funds by an UGLG **for their use** in carrying out agreed-upon, eligible activities. Subrecipients are subject to the same procurement requirements as the UGLG that was awarded the CDBG funds. There are some rare exceptions for certain types of contracting by certain types of subrecipients such as developers. Contact DEHCR for guidance regarding subrecipient requirements.

### WARNING!

The UGLG **must** consult with DEHCR prior to entering into an agreement with a subrecipient.

## 14.0 STARTING THE WORK

Refer to Chapter 8: *Financial Management* of the [CDBG Implementation Handbook](#) and the terms set forth in the UGLG's *Grant Agreement* with DEHCR for specifications for starting work and incurring costs for the CDBG project.

## 15.0 RECORDS AND FILES

According to [2 CFR 200.318\(i\)](#), the UGLG shall maintain records to detail the significant history of a procurement and contracting.

The UGLG must establish procurement and contracting files and monitor the contracts to ensure that the contracts are completed in a satisfactory and timely manner.

The Procurement and Contracting records\* must contain (if applicable):

- UGLG's local procurement policy;
- Descriptions of methods used to select consultants and contractors [e.g., Small Purchase/Simplified Acquisition, Request for Bids (RFB), Request of Qualifications (RFQ), Request of Proposals (RFP), Sole Source];



- Copies of quote requests (or quote source information and detailed item descriptions for quotes obtained online), RFB, RFQ and/or RFP documents used for soliciting responses from contractors/service providers, and related procurement correspondence/communications;
- Advertisement(s) for bids and/or proposals and proof of publication (as applicable);
- Quotes/bids/qualifications/proposals received and evaluation method(s) (e.g., quote review summary, bid tabulation detailed summary, qualifications review summary, proposal evaluation scoring summary, etc.);
- Cost/pricing comparison data/records;
- Record of the approval by the governing body of the quote/bid/qualifications/proposal accepted/selected (as applicable);
- Contract(s) for goods/services;
- Conflict of Interest related documentation (e.g., contractors' potential conflict of interest disclosure statements, local policy regarding conflicts of interest, UGLG public disclosure and review records [if applicable], legal opinion(s) [if applicable], related correspondence to DEHCR [if applicable], request(s) for waiver [if applicable], etc.);
- Records of <https://sam.gov/content/home> exclusion/debarment searches;
- Signed Lobbying Certifications for all contractors; and
- Completed Disclosure of Lobbying Activities forms (as applicable).

*\*Contracting documents related to construction may be maintained in the Labor Standards files established for contractors and subcontractors.*

The UGLG may be asked to provide procurement documentation related to any or all contractors, suppliers and service providers applicable to the project at any time. Improperly procured services or goods will be deemed ineligible costs and DEHCR may deny payment or prohibit the costs from being counted towards the UGLG's match funding for the CDBG project.

## 16.0 RELEVANT LAWS

Procurement laws governing public construction in Wisconsin are as follows:

- Wisconsin State Statutes concerning advertising and bidding of public construction projects: [66.0901](#) (general); [59.52\(29\)-\(31\)](#) (county); [60.47](#) (town); [61.50](#) and [61.54](#) through [61.57](#) (village); [62.15](#) (cities); and [ch. 985](#).

Procurement and contracting laws governing federal CDBG projects are as follows:

- Code of Federal Regulations:  
General: [2 CFR 200](#), [2 CFR 200.317](#) – [2 CFR 200.343](#)

CDBG: [24 CFR 570.489](#), [24 CFR 570.503](#), [24 CFR 570.607](#), [24 CFR 570.609](#), [24 CFR 570.610](#), [24 CFR 570.611](#)

Refer to Chapter 6: *Equal Opportunity, Fair Housing & Section 3* and Chapter 7: *Labor Standards* of this Handbook for additional relevant laws for contracting.

## 17.0 CONTRACT LANGUAGE AND FORMS

Contracts are to include the language and forms as indicated in the table provided in Attachment 3-I: *Contract Language/Insertions Summary*.

## 18.0 CHAPTER ATTACHMENTS LIST

Attachments for Chapter 3 of the [CDBG Implementation Handbook](#) are listed below. The forms and templates are available in editable or ‘fillable’ format on the [CDBG Implementation Handbook website](#) under the “Chapter Attachments/Fillable Forms” section.

ATTACHMENT 3-A:	PROCUREMENT POLICY EXAMPLES
ATTACHMENT 3-B:	POTENTIAL CONFLICT OF INTEREST DISCLOSURE (TEMPLATE)
ATTACHMENT 3-B(1):	POTENTIAL CONFLICT OF INTEREST DISCLOSURE – TEMPLATE INSTRUCTIONS
ATTACHMENT 3-B(2):	POTENTIAL CONFLICT OF INTEREST DISCLOSURE (EXAMPLE)
ATTACHMENT 3-C:	24 CFR 570.489(h) CONFLICT OF INTEREST CLAUSE
ATTACHMENT 3-D:	LOBBYING CERTIFICATION (TEMPLATE)
ATTACHMENT 3-D(1):	LOBBYING CERTIFICATION INSTRUCTIONS
ATTACHMENT 3-D(2):	LOBBYING CERTIFICATION (EXAMPLE)
ATTACHMENT 3-E:	DISCLOSURE OF LOBBYING ACTIVITIES FORM (TEMPLATE)
ATTACHMENT 3-F:	OVERVIEW OF PROCUREMENT METHOD OPTIONS
ATTACHMENT 3-G:	REQUEST FOR PROPOSALS (RPF) TEMPLATE
ATTACHMENT 3-H	REQUEST FOR QUALIFICATIONS (RFQ) TEMPLATE
ATTACHMENT 3-I	CONTRACT LANGUAGE/INSERTIONS SUMMARY
ATTACHMENT 3-J:	CDBG BUILD AMERICA, BUY AMERICA ACT (BABA) REQUIREMENTS (CONTRACT INSERTION)

ATTACHMENT 3-K:	WISCONSIN CDBG BABA PROJECT-SPECIFIC WAIVER REQUEST
ATTACHMENT 03-L:	CONTRACTOR BABA SELF-CERTIFICATION
ATTACHMENT 03-M:	BABA COVERED MATERIALS LIST
ATTACHMENT 03-N:	SUMMARY OF BABA REQUIREMENTS

## 19.0 CHAPTER REVISIONS HISTORY

### 02/09/2024

- Original chapter released.

### 04/14/2025

- Styling & Formatting: Style and formatting revisions and weblink updates made throughout the chapter.
- Section 10.0 BABA: Added BABA guidance updates, including HUD Notice CPD-2025-01 source and the HUD phase-in updates and specifications for the documentation that must be on file and that must be submitted and/or provided upon request to DEHCR, HUD and other regulating entities. Added BABA Attachments 3-L, 3-M, and 3-N documentation and submission requirements.
- Section 11.0 Contracting for Professional Services: Revised text pertaining to recommended language for contracts that are contingent upon the CDBG grant agreement being executed.
- Section 18.0 Chapter Attachments List section: Updated the list of the Chapter 3 Attachments and added reference to the [CDBG Implementation Handbook](#) website (under the “Chapter Attachments/Fillable Forms” to access them.
- Chapter Attachments Copy Deletions: Deleted all chapter attachment document copies that previously appeared within this chapter of the Handbook.
- Section 19.0 Chapter Revisions History Added: Section 19.0 added, with this list of the 4/14/2025 updates.
- Table of Contents Update: Updated table.

### 06/05/2025

- Chapter Attachment 03-K Update: Revised instructional text for entry fields in Section 14; and revised formatting throughout document.

06/17/2025

- Chapter Attachment 03-M Update: Revised formatting, instructional text, and entry field numbering in Section 2 – items 2(i). and 2(j).; and entry field numbering in Section 4 – items 4(a)-4(c).