



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-3000

OFFICE OF LEAD HAZARD CONTROL  
AND HEALTHY HOMES

<b>Policy Guidance Number: 2017-04</b>		<b>Date: September 18, 2017</b>
<b>SUBJECT:</b>	<b>Office of Lead Hazard Control and Healthy Homes Grant Procurement Standards</b>	
<b>STATUS:</b>	<b>Current</b>	
<b>APPLICABILITY:</b>	<b>ALL OLHCHH Grants and Cooperative Agreements Fiscal Year 2015 to Current</b>	
<b>RELATED FEDERAL REGULATIONS:</b>	<b>OMB Uniform Guidance: 2 CFR § 200.317 through § 200.326</b> <b>OMB guidelines on debarment and suspension: 2 CFR part 180</b> <b>Federal Acquisition Regulations: Parts 6, 13, 14, and 15</b> <b>OLHCHH Policy Guidance 2017-02, Determining Subrecipient or Contractor Classification</b>	
<b>COMMENTS:</b>		

This Policy Guidance is being issued to provide guidance and instructions on procurement standards and methods to be used by the Non-Federal Entities that are recipients or subrecipients of grants and cooperative agreements (collectively, here, “grants”) from the Office of Lead Hazard Control and Healthy Homes (OLHCHH). The OLHCHH’s grantee must provide a copy of its procurement policies and procedures to OLHCHH during the grant negotiations.

A Non-Federal Entity must: (1) Provide for the fair and equitable treatment of all persons or firms involved in purchasing; (2) Assure that supplies, equipment or services are procured efficiently, effectively, and at the most favorable prices; (3) Promote competition in contracting; (4) Provide safeguards for maintaining a procurement system of quality and integrity; and (5) Assure that the Non-Federal Entity purchasing actions are in *full compliance with 2 CFR § 200.317 through § 200.326, the grant agreement, and OLHCHH’s Policies.*

### **APPLICATION**

Per 2 CFR § 200.318(a), the Non-Federal Entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, if the procurements conform to applicable Federal law and the standards identified in the above, “Related Federal Regulations” section. Therefore, this policy guidance applies to all contracts for the procurement of supplies, equipment or services entered by the Non-Federal Entity **approved** by the Grants Service Division, OLHCHH in accordance Policy Guidance 2017-02, *Determining Subrecipient or Contractor Classification*. It shall apply to every expenditure of funds under a contract with the Non-Federal Entity reimbursed by the OLHCHH.

When both OLHCHH and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and the provisions of this Policy must be applied to the work financed by OLHCHH. If it is not possible to separate the funds, the provisions of this policy guidance shall be applied to the total project or service being provided.

The term “procurement,” as used in this policy guidance, includes both contracts and modifications (including change orders) for services, as well as purchase, lease, or rental of materials, supplies, and equipment. See Policy Guidance 2017-02 for the meaning of “contracts” as used in this policy guidance.

Much of this policy guidance is based on the Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200; “Uniform Guidance”). The various sections of the Uniform Guidance discussed below are available within the electronic Code of Federal Regulations ([www.ecfr.gov](http://www.ecfr.gov)) website.<sup>1</sup>

***Contract Claims and Disputes:*** In accordance with 2 CFR § 200.318(k), the ***Non-Federal Entity alone must be responsible***, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Non-Federal Entity of any contractual responsibilities under its contracts. The OLHCHH will not substitute its judgment for that of the Non-Federal Entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

***Debarment and Suspension:*** No contract award may be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines on debarment and suspension at 2 CFR part 180.<sup>2</sup>

***Prompt Payments to Contractors*** must adhere to 2 CFR § 200.305, Payment: The Non-Federal Entity must make timely payment to contractors in accordance with the contract provisions. When the reimbursement method is used, the pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the OLHCHH or pass-through entity reasonably believes the request to be improper (See 2 CFR § 200.53, Improper Payments). Note that, if non-federal laws or regulations applicable to a Non-Federal Entity specify a shorter prompt payment period, the Entity must comply with that shorter period.

## **PROCUREMENT ADMINISTRATION**

The Non-Federal Entity must have a contract administration system that is maintained to assure that contractors perform in accordance with their contracts, which provides for the proper inspection of supplies, services, or equipment as well as monitoring contractor performance, status reporting on contracts, and similar matters. Contract Provisions must be in accordance with 2 CFR § 200.326: The Non-Federal Entity's contracts must contain the applicable provisions described in Appendix II

<sup>1</sup> [www.ecfr.gov/cgi-bin/text-idx?node=pt2.1.200](http://www.ecfr.gov/cgi-bin/text-idx?node=pt2.1.200)

<sup>2</sup> <https://www.ecfr.gov/cgi-bin/text-idx?node=pt2.1.180>

to Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. (Note that the nature of the Grantee's contract administration system is a topic that is discussed during grant negotiations.)

The Non-Federal Entity must have written policies and procedures for procurement transactions. A copy of the written policies and procedures must be provided to the OLHCHH prior to the awarding of the grant or cooperative Agreement. These policies and procedures must ensure that all solicitations: Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Guidance on implementing the procurement methods discussed in this policy guidance is provided in the Federal Acquisition Regulations (FAR; title 48 of the CFR; [www.acquisition.gov](http://www.acquisition.gov)); specific FAR provisions are cited below.

***All procurement transactions*** must be conducted in a manner providing full and open competition consistent with the standards of this policy, including the special procurement methods below. To ensure objective contractor performance and eliminate unfair competitive advantage or even the appearance of such an advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals ***must be excluded*** from competing for such procurements.

Assistance to Small and Minority Businesses: ***As a required effort***, the Non-Federal Entity should make good faith efforts to ensure those small businesses and minority-owned businesses, women's business enterprises, and individuals or firms located within or owned in substantial part by persons residing in the area where the work or services for the grant are being used when possible. Such efforts shall include, but shall not be limited to:

- Including such firms, when qualified, on solicitation mailing lists;
- Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- Using the services and assistance of the Small Business Administration;
- Requiring prime contractors, when subcontracting is anticipated, to take the steps listed above.

Contracts and modifications must be in writing, clearly specify the desired supplies, equipment or services, and be supported by sufficient documentation regarding the history of the procurement, including as a minimum the rationale for the procurement method chosen, the contract type, the rationale for selecting or rejecting offers, and for procurements more than the "Simplified Acquisition Threshold" (see the Small Purchase Procedures segment, below), and a price or cost analysis supporting the basis for the contract price.

## **METHODS OF PROCUREMENT TO BE FOLLOWED**

*The Non-Federal Entity must use one of the following methods of procurement:*

**BLANKET PURCHASE AGREEMENTS (BPA):** A BPA is a simplified method of filling anticipated repetitive needs for supplies or services. The grantee (or other buyer) establishes an agreement to be able to purchase services or materials, under a specified performance work statement or product performance criteria statement, with qualified firms at specified prices. This eliminates the need for issuing individual purchase documents.

Once a BPA has been established, task or delivery orders can be placed without further competition. BPAs may be used for a variety of expendable supplies and services and are particularly attractive when the exact items, quantities and delivery requirements are not known in advance. The process to set up a BPA will save your grant or cooperative agreement time and money while making your purchasing quicker and easier. Prior to following the small purchasing procedures established below, the grantee will have created an historical database on their re-occurring purchases. After obtaining an estimate on the volume or quantities of a list of products, the grantee uses that information to solicit quotes or discount rates from several contractors. By using the purchasing power of greater quantities, the grantee secures better pricing. The maximum total value of a Small Purchase BPA, for which the contractors may be put on the list using the small purchase procedures, below, is \$150,000 per contractor. Similarly, BPAs may be established for total values per contractor above the small purchase threshold by using the Sealed Bid procurement method, below, for unit price awards under the BPA (for example, establishing a contractor's base unit price per home to have lead hazard control work conducted, and a per-room supplemental unit price for a home with more than a specified number of major rooms – not counting hallways, staircases, closets, etc.).

The federal procedures for using BPAs are found at FAR subpart 13.303; these may be used as guidance for BPA contracting by Non-Federal Entities.<sup>3</sup> Even though the General Services Administration (GSA) Multiple Awards Schedule (MAS) contracting process is unavailable for contracting under lead hazard control grants, grantees may wish to identify local contractors from the schedule for soliciting proposals. See, for example, the GSA MAS Summary: Professional Services Schedule,<sup>4</sup> for the schedules for Advertising Services (category 541) (usable for recruitment campaigns); Other Direct Costs for Advertising Services (541 1000); Environmental Consulting Services (899 1); and Environmental Training Services (899 3); among others. Of course, when EPA or State lead certifications are required (such as for lead-based paint abatement, lead-safe renovation, lead-based paint inspection, and/or lead risk assessment), contractors must have those certifications; see the EPA's lead website for a link for identifying certified firms.<sup>5</sup>

See Policy Guidance 2017-02, "Determining Subrecipient or Contractor Classification," when the BPA method is used for a homeowner or landlord to choose a contractor provided by the grantee to

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<sup>3</sup> [www.acquisition.gov/sites/default/files/current/far/html/Subpart%2013\\_3.html](http://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2013_3.html)

<sup>4</sup> [www.gsaelibrary.gsa.gov/ElibMain/scheduleSummary.do?scheduleNumber=00CORP](http://www.gsaelibrary.gsa.gov/ElibMain/scheduleSummary.do?scheduleNumber=00CORP)

<sup>5</sup> [www.epa.gov/lead/lead-based-paint-activities-professionals](http://www.epa.gov/lead/lead-based-paint-activities-professionals)

perform the work on their property. As described in that policy guidance, a homeowner or other individual housing owner (e.g., a person who is the landlord) is a beneficiary of the grant, and cannot be a subrecipient of the Grantee. Accordingly, a homeowner or individual landlord may not be reimbursed by the Grantee for contracting with a lead hazard assessment or control contractor, nor with a housing hazard assessment or mitigation contractor, whether contracted through a BPA or otherwise, and may not be named on any payment (check or electronic funds transfer) to any of the contractors under the grant.

***PROCUREMENT BY MICRO-PURCHASES:*** In accordance with 2 CFR §§ 200.320(a) and 200.67, the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. As of the publication of this Policy Guidance, micro-purchase threshold \$3,500 (see 48 CFR § 2.101, Definitions). Micro-purchases must follow simplified acquisition procedures that are a subset of a non-Federal entity's small purchase procedures to expedite its lowest-dollar small purchase transactions and minimize administrative burden and cost. To the extent practicable, the Non-Federal Entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Non-Federal Entity considers the price to be reasonable. The federal procedures for using micro-purchases are found at FAR subpart 13.2; these may be used as guidance for micro-purchase contracting by Non-Federal Entities.<sup>6</sup>

***PROCUREMENT BY SMALL PURCHASE PROCEDURES:*** In accordance with 2 CFR § 200.320(b), relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. As of the publication of this Policy Guidance, the Simplified Acquisition Threshold is \$150,000 (see 48 CFR 2.101, Definitions). If small purchase procedures are used, price or rate quotations must be solicited from an adequate number of qualified sources. Typically, at least three quotations must be solicited, although for larger procurements, it may be desirable to solicit quotations from more, e.g., five or seven. The federal procedures for using small purchase procedures are found at FAR subpart 13.3; these may be used as guidance for small purchase procedures contracting by Non-Federal Entities.<sup>7</sup>

***PROCUREMENT BY SEALED BIDS*** (Formal advertising): In accordance with 2 CFR § 200.320(c), bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The requirements for this method are described in paragraphs under § 200.320(c). The federal procedures for using small purchase procedures are found at FAR subpart 14; these may be used as guidance for sealed bid contracting by Non-Federal Entities.<sup>8</sup>

***PROCUREMENT BY COMPETITIVE PROPOSALS:*** In accordance with 2 CFR § 200.320(d), this technique is normally conducted with more than one source submitting an offer, and either a

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<sup>6</sup> [www.acquisition.gov/sites/default/files/current/far/html/Subpart%2013\\_2.html](http://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2013_2.html)

<sup>7</sup> [www.acquisition.gov/sites/default/files/current/far/html/Subpart%2013\\_3.html](http://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2013_3.html)

<sup>8</sup> [www.acquisition.gov/far/html/FARTOCP14.html](http://www.acquisition.gov/far/html/FARTOCP14.html)

fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. The requirements for this method are described in paragraphs under § 200.320(d). The federal procedures for using small purchase procedures are found at FAR subpart 15; these may be used as guidance for competitive proposals contracting by Non-Federal Entities.<sup>9</sup>

***PROCUREMENT BY NONCOMPETITIVE PROPOSALS:*** In accordance with 2 CFR § 200.320(f), procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the circumstances below apply. The federal procedures for using sole-source procedures are found at FAR section 6.302-1, with the requirements for the sole-sourcing justification found at FAR subpart 6.303; these may be used as guidance for noncompetitive contracting by Non-Federal Entities.<sup>10</sup>

- The item is available only from a single source;
- The public exigency (an urgent need or demand) or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Non-Federal Entity; or
- After solicitation of several sources, competition is determined inadequate.

#### **FOR FURTHER INFORMATION**

If you have any questions, please contact your grant's Government Technical Representative.

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<sup>9</sup> [www.acquisition.gov/far/html/FARTOCP15.html](http://www.acquisition.gov/far/html/FARTOCP15.html)

<sup>10</sup> [www.acquisition.gov/far/html/Subpart%206\\_3.html](http://www.acquisition.gov/far/html/Subpart%206_3.html)