

CHAPTER THREE PROCUREMENT

1. PURPOSE

- A. This chapter provides an overview of the Federal and State procurement requirements. It covers the basics of the federal law codified at 2 CFR, Part 200, THDA and THDA procurement policies and rules, and outlines the allowable types and methods of procurement.

2. OVERVIEW OF PROCUREMENT REQUIREMENTS AND PROVISIONS

- A. When an ESG Program grant recipient elects to hire a contractor or procure items, materials, or services, they must follow their documented procurement policy as well as Federal and (THDA) procurement policy and laws. HUD standards for procurement can be found in 2 CFR Part 200.318-320. THDA has adopted its own procurement policy and procedures which can be accessed online.
1. <https://s3.amazonaws.com/thda.org/Documents/About-THDA/Purchasing-Policy.pdf>
 2. Organizational policies that are stricter than those outlined in Part 200 or THDA's Procurement policy are permissible and the more stringent policy must be followed.
- B. **General Procurement Standards** – Good procurement standards and practices are required and necessary for a successful program. This will include good planning.
1. The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
 2. Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 3. Identify and clearly specify standards for the goods or services the Recipient wants to obtain;
 4. Seek competitive offers to obtain the best possible quality at the best possible price;
 5. Use a written agreement that clearly states the responsibilities of each party;
 6. Keep good records; and
 7. Have a quality assurance system that helps ensure that the grantee gets what it pays for.
 8. Where possible use Integrity Agreements. To foster greater economy and efficiency and to promote cost-effective use of shared services, the Grantee is encouraged to enter into state and local intergovernmental agreements or *inter-entity agreements* where

appropriate for procurement or use of common or shared goods and services. This is designed to encourage shared services and goods, e.g., strategic sourcing. (See [2 CFR § 200.318\(e\)](#).)

9. The Grantee is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property when this is feasible and when it reduces project costs. (See [2 CFR § 200.318\(f\)](#)).
10. The Grantee is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
11. The Grantee must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [2 CFR § 200.213 - Suspension and debarment](#).
12. The Grantee must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
13. The Grantee 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 Federal awarding agency 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.

3. PROCURMENT METHODS

There are 5 (five) options. (See [2 CFR § 200.320](#)) This section is generally based on Circular A-102. One of the options- *micro-purchases*- is NEW.

- A. **MICRO PURCHASE PROCUREMENT** – Micro-purchases are used for acquisition of supplies or services if the aggregate amount does not exceed the “micro-purchase threshold” (currently \$3,000), as set by the Federal Acquisition Regulation at [48 CFR Subpart 2.1 Definitions](#) (See [2 CFR § 200.67](#)).
1. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.
2. To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers.

3. The micro-purchase threshold is adjusted for inflation on a periodic basis.
- B. SMALL DOLLAR PROCUREMENT** – Informal methods that are sound and appropriate are allowed for the procurement of supplies and other property whose total cost is not more than the Micro Purchasing limit (\$3,000 in most cases) and contracts (other than construction) not exceeding the Simplified Acquisition Threshold (currently \$150,000) Informal procurement methods would also apply to professional service contracts of \$10,000 or less.
1. **SMALL DOLLAR PURCHASES OF EQUIPMENT, SUPPLIES AND NON-PROFESSIONAL SERVICES** – Price or rate quotations must be obtained from a minimum of 3 qualified sources.
 - a. These quotations may be obtained in writing, over the internet or by telephone as long as the Grantee keeps a written record of the price quotations in the grant file. The contract should be awarded to the source with the lowest price quotation.
 2. **PROFESSIONAL SERVICE CONTRACTS (LESS THAN \$10,000)** – Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least 3 firms that offer the type of service the grantee wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required if the professional service contract amount is less than \$10,000. The contract must be awarded solely on the basis of qualifications and cost.
- C. PROCUREMENT THAT REQUIRES FORMAL BIDDING** – Procurement of equipment, non-professional services and construction contracts whose total cost is more than the Micro Purchase limit (\$3,000 in most cases) must formally advertised for sealed bids or competitive proposals and a public bid opening in a newspaper of general circulation.
1. **ADVERTISEMENT REQUIREMENTS** – The invitation to bid must be published in a newspaper of general circulation at least **14 days** prior to the public bid opening. To avoid delays, a Grantee may wish to publish the invitation for bids in the newspaper of the closest major city (Knoxville, Nashville, Memphis or Chattanooga) to gain wider circulation and thereby increase chances of receiving at least 3 bids. The cost of publication is an administrative expense.
 2. **BID SOLICITATION** – Bid Solicitation must be a free, open competitive process. Every effort must be made to solicit minority and female businesses. The Grantee should not structure its procedures in order to keep business "in town". Absolute fairness must prevail in every aspect of the program, and any questions concerning conflict, or apparent conflict of interest should be discussed with THDA.
 3. **BID SELECTION** – **A minimum of three (3) bids must be received.** Bids will be opened on the date and time previously established. A bid tabulation form will be prepared. The owner will select the lowest qualified bid. **THDA requires that the project be re-bid if there are not at least three (3) valid bids in response to the invitation for bids.**
 - a. If the project is re-bid and 3 bids still are not obtained, contact THDA for an exception to the 3 bid requirement. THDA may consider your project as a sole source procurement and/or allow you to award the contract with less

than 3 bidders. **Written permission must be obtained from THDA before you may award a contract with less than three bids.**

- b. Should the Grantee/owner decide to select a bid other than the lowest qualified bid, the Grantee/owner should state the reasons/justification in writing. If the owner's justification is not acceptable, the owner will be required to finance any rehabilitation amount that exceeds the lowest qualified bid through his/her personal resources.
 - c. The Grantee will reject a bid in instances where the bid exceeds the cost estimate by a percentage determined by the Grantee in its policies and procedures, unless a review of the cost estimate demonstrates an error. If a low bid is under the cost estimate, a meeting will be arranged with the contractor to assure that his cost is within reason and will allow him to satisfactorily complete the job. The ESGowner will be advised if no acceptable bids are received on their house and the project will be re-bid.
4. **REBID OR CHANGES IN SCOPE** – If all bids exceed the amount of the construction budget, Grantees *may not* negotiate solely with the low bidder. The project can be re-bid or changed in scope. If the scope of the project is changed, then each bidder must be given the opportunity to bid again. Bidders must be informed that they have the right to change their original unit prices as long as they conform to the revised bid specifications. Grantees must maintain documentation to demonstrate that this process was followed.
- a. **DEDUCTIBLE AND ADDITIVE ALTERNATES** – Bid specifications for construction projects may contain deductible alternates. By definition, a *deductible alternate* is a portion of the project that can be deleted to bring construction costs within the budget if all bids received exceed the funds available for construction. The deductible alternates must not change the scope of the project. Bid specifications for construction projects may also contain additive alternates.
 - b. **DISQUALIFIED CONTRACTORS** – The Grantee must disqualify a contractor from bidding on projects when the contractor is listed on HUD's Limited Denial of Participation and Voluntary Abstention List (the "Debarred List").
 - c. A Grantee may also disqualify a contractor from bidding on projects when:
 - i. There is documented proof that the contractor has not paid material suppliers; or
 - ii. The contractor has not completed projects within the allotted time frame; or
 - iii. There exist complaints by property owners about quality of work and performance.
5. **PROFESSIONAL SERVICE PROCUREMENT (MORE THAN \$10,000)** – Professional service procurement procedures must be followed prior to the performance

of any work by the professional service contractor to be paid with ESG funds. The Grantee may publicly advertise for proposals or solicit requests for proposals from at least 3 firms that offer the type of service the Grantee wishes to procure.

- a. Once the proposals have been received, the preferred method of review is by a committee of at least three people who have technical knowledge of the type of service being considered.
 - b. The review, including the criteria for selection, should be thorough, uniform and well-documented. The reviewers should have no potential conflicts of interest with any of the firms or individuals under review (i.e., family relationships, close friendships, or business dealings).
6. **NONCOMPETITIVE PROPOSALS** – clarified to specify that it can be used only under certain conditions, e.g. when only one or more of the following factors apply. The documentation of this process is important. The factors to be considered include:
- a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal awarding agency (or pass-through entity) expressly authorizes this method in response to a written request from the non-Federal entity;
 - d. After solicitation of a number of sources, competition is determined inadequate.

4. PROCUREMENT REVIEW

- A. Upon request of THDA, the Grantee must make available: (See [2 CFR § 200.324](#)).
1. Technical Specifications. The technical specifications on proposed procurements where THDA believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition.
 2. Procurement Documents. Upon request of THDA, the Grantee must make the procurement documents (e.g., requests for proposals, invitations for bids, or independent cost estimates) available for pre-procurement review when:
 - a. The Grantee procurement procedures or operations fail to comply with the procurement standards in Part 200; or
 - b. The procurement is expected to exceed the Simplified Acquisition Threshold (currently \$150,000); and
 - c. The procurement is to be awarded without competition or only one bid/offer is received in response to a solicitation; or
 - d. The procurement specifies a “brand name” product; or

- e. The proposed contract is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- f. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.