NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT

Community Development Block Grant
2020 Full Certification – Webinar 2

NEBRASKA

We'll Explain

- Nebraska CDBG Timeline
- Different Types of Procurement
- Contract Language
- Conflict of Interest

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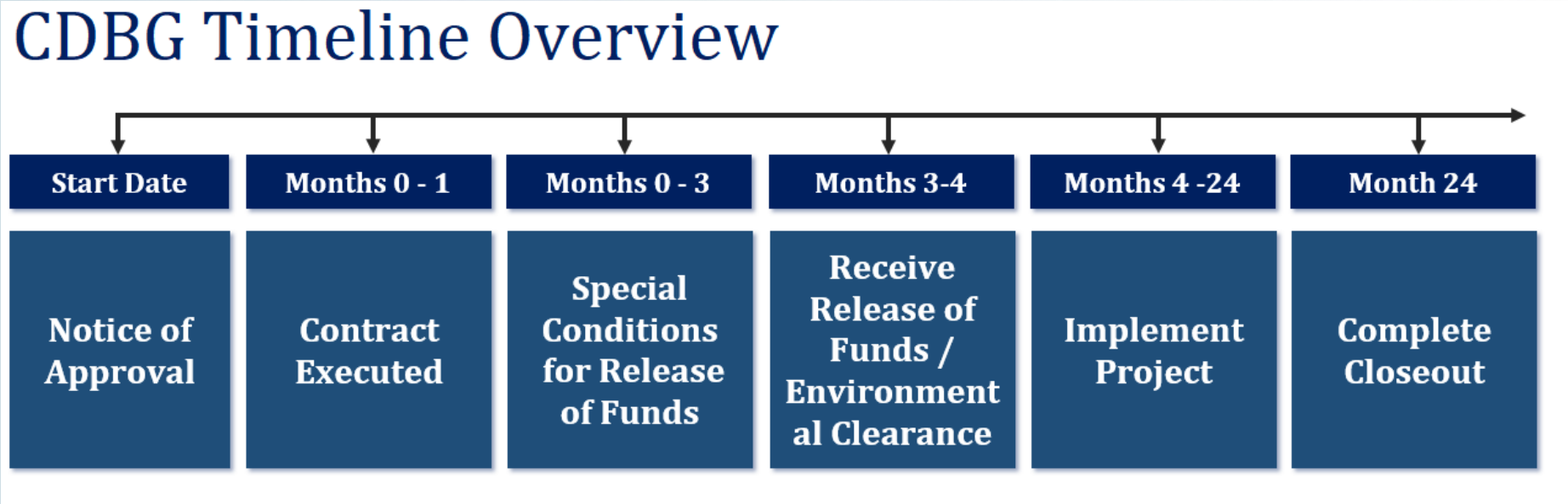
Nebraska CDBG Process



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Notice of Approval

- Execute General Administration Contracts
- Begin Incurring Costs for General Administration.

PROJECT BEGINS

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Contract Execution

- This is the Contract between the local unit of Government (Grantee) and the Nebraska Department of Economic Development (DED)
- The Grantee has 30 days to execute the agreement and return to DED.

MONTH 0 - 1

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Special Conditions

- The special conditions identified within the contract between the Grantee and DED must be completed within 90 Days (3 months) after the grantee receives the Notice of Approval.

MONTH 0 - 3

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Notice of Release of Funds / Environment Clearance

- Execute Contracts Associated with Project Activities.
- Project Activities can Begin
- Grantee can begin requesting funds from DED

MONTH 3 - 4

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Implement Project

- Submit Required Reports
  - Semi-Annual Reports
  - Annual Audit
  - Program Income
- Project is Monitored by DED
- 2nd Public Hearing Occurs
- Fair Housing Action Completed

MONTH 4 - 24

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Complete Closeout

- Submit Final Reports
  - Final Financial Report
  - Final Project Status Report
  - Final Wage Compliance Report
  - Final Product

MONTH 24 - 28

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Procurement Overview

- Recipients of CDBG funds are responsible for ensuring that goods and services are procured competitively and in accordance with established procurement rules and regulations ***2 CFR Part 200 Chapter 300-345*****.**
- Local procurement policies should describe how the recipient will procure supplies, materials, services and equipment.
- **Procurement needs to be open and free competition.**

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When Doesn't Procurement Occur

- If a local unit of government is performing services by their own staff and the staff have that capacity to perform that service.
- Examples:
  - Local Unit of Government staff member is the CDBG Certified Administrator
  - Local Unit of Government has an engineer on staff or appointed an engineer
  - If they are a member of a development district that provides the specific service.

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Appointment vs. Procurement

- Procurement is not required where Grantee will act in their official capacity (in-house).
- Officials of the grantee who are acting in their official capacity are considered "in-house".
- Appointments must not be made for the purpose of selecting a firm to work on an anticipated CDBG project.

- EXAMPLE: Anytown has appointed ABC Engineering, Inc. as City Engineer, ABC can serve as the project engineer where:
  - Firm has been appointed at an official organizational meeting of local government,
  - Appointment is in place at the time of application, and
  - Documentation of appointment is available for current and two years prior.

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When Does Procurement Occurs

- Contracting for the following Services:
  - CDBG Certified Administrators
  - Housing Management
  - Construction Contractor
  - Engineer
  - Architect
  - Lead Based Paint

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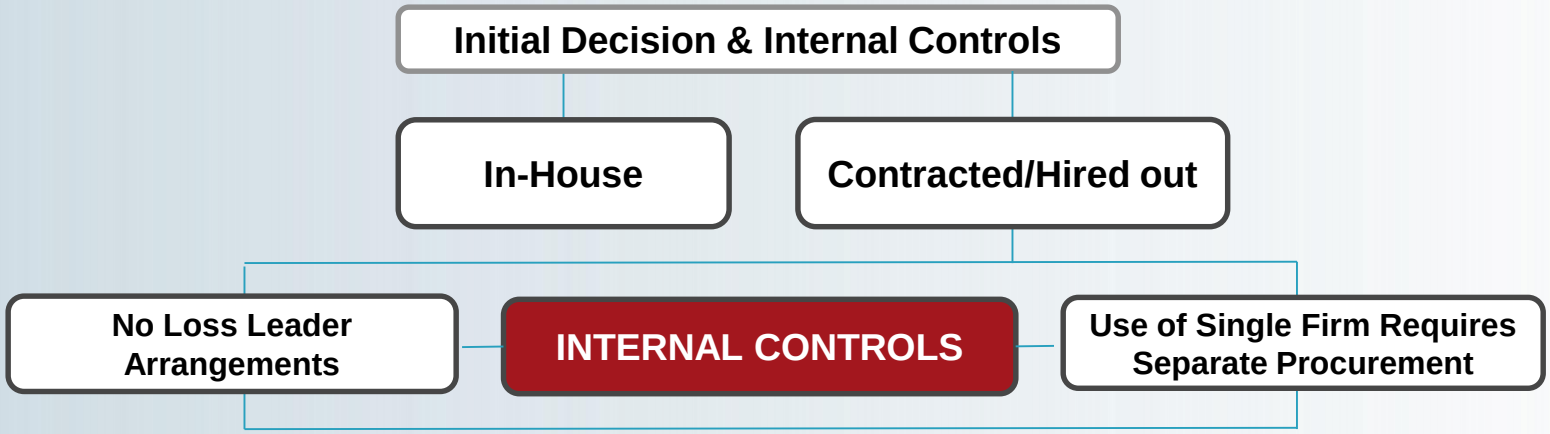
Procurement Options



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Intent of Federal Regulations:
Maximum Open and Free Competition

Feasible use of local businesses and MWBE

Observe special rules related to purchase type

Properly document review procedure and decisions

Comply with federal, state, and local rules and regulations, including conflict of interest and cost-effective, economical purchase practices.

INTERNAL CONTROLS

*Established standards of conduct concerning **integrity** and **ethical values***

No Loss Leader Arrangements

"Loss-leader" arrangements: where a consultant offers to prepare a grant application or preliminary engineering estimates at ***cut rates or at no cost in return for a future contract*** if the application is funded, are prohibited.

Use of Single Firm Requires Separate Procurement

If a firm provides assistance with the procurement process, that firm must not also bid on the those services being procured.

Assistance with the procurement process may include:

- preparation of advertisements
- evaluation and scoring of bids
- bid selection

Loss-Leader Arrangement

Loss-leader arrangements *violate federal regulations* which require maximum open and free competition.

What is a "loss-leader" arrangement? An unethical practice.

Some firms may suggest this approach because costs incurred by a city or county prior to the award of CDBG funds (e.g. preparation of the application or preliminary engineering studies) not eligible for reimbursement.

Professional organizations consider this practice unethical because it deprives the client of the benefits that can results from competition among competent, professional firms.

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Multi-Service Procurement

Use of **multi-services procurement** and contracting is generally prohibited.

Note: the multi-services procurement of a grant application preparer/writer and grant administration is prohibited. These services prior to grant award must be conducted separately.

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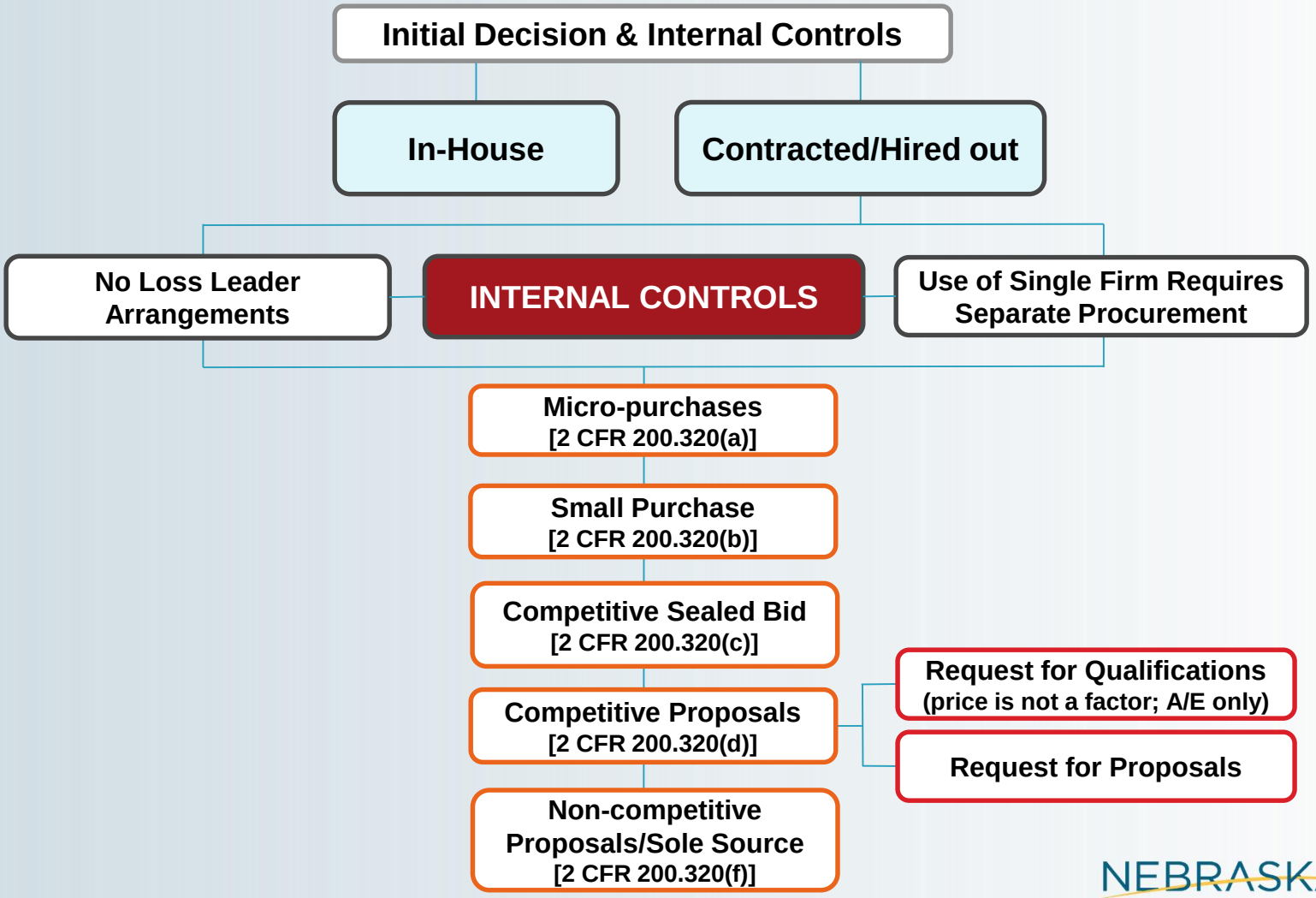
Procurement Options



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Micro-Purchases

- 2 CFR200.320(a)
- Best used for obtaining small quantities of supplies and services.
- May be used for procurement of **$3,000 or less** in the aggregate.
  - Note: If this is a acquisition related to construction and subject to DBRA, $2,000 is the threshold.

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Small Purchase

- 2 CFR 200.320 (b)
- Best used for obtaining small quantities of supplies or services.
- May be used for procurement of **$150,000 or less** in the aggregate.
- Must document the receipt of an adequate number (usually at least 3) of price or rate quotation from qualified vendors.

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Small Purchase

1. Identify in writing the item to be procured.
2. Solicit in writing, written quotes from at least three qualified bidders. Verbal quotes, documented by the grantee in writing, are acceptable for purchases of less than $500.
3. Identify the lowest responsible bidder.
4. Notify each bidder in writing as to whether or not they are the apparent low bidder.
5. Execute a contract to the lowest responsible bidder.

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Competitive Sealed Bid

- 2 CFR 200.320 (c)
- Best suited to obtaining **contractors for construction projects** and for large quantities of goods or materials
- Must identify a firm, fixed price contract (lump sum or unit price)
  - Selection of a vendor/contractor can be made principally on the basis of price.

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Competitive Sealed Bid

1. The grantee must advertise the invitation for bids in publications of general circulation, solicit bids from an adequate number of known suppliers, providing them sufficient time to respond prior to bid opening;
2. The invitation for bids must include complete and accurate specifications and pertinent attachments, and clearly define items or services needed, in sufficient detail for the bidders to properly respond;
3. Bids must be opened publicly at the time and place stated in the Invitation for bids;

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Competitive Sealed Bid

4. The grantee must receive at least two or more responsible bids for each procurement transaction. If two or more responsible bids are not obtained, contact the Department.
5. If awarded, a firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder. The grantee can, however, decide not to make the award to any of the bidders; and
6. Any or all bids may be rejected if there is a sound documented reason.

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Competitive Proposals

- 2 CFR 200.320 (d)
- Best suited to obtaining professional services.
- Examples: Engineer, Architect, CDBG Certified Administrator, Housing Management, Lead Based Paint
- Normally conducted with more than one source submitting an offer and is a fixed-price or not-to-exceed type contract.
- This option is generally used when condition are not appropriate for use of a seal bids

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Competitive Proposals Requirements

1. Requests for proposals (RFP's) or qualifications (RFQ's) must be publicized and identify all evaluation factors and their relative importance.
2. Proposals must be solicited from an adequate number of qualified sources (at least three);
3. Grantees and sub-grantees must have a method for conducting technical evaluations of the proposals received according to the criteria specified in the RFP and for selecting awardees;

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Competitive Proposals Requirements

4. Awards must be made to the responsible firm whose proposal is most advantageous to the program, with price and other specified factors considered; and
5. Grantees may use competitive proposal procedures for qualification-based procurement of architectural/engineering (A/E) professional services, whereby competitor's qualifications are evaluated and the most qualified competitor is selected subject to negotiation of fair and reasonable compensation.

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Competitive Proposals: **Evaluation**

- 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 firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.

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Competitive Proposals

- There are two sub-parts under competitive proposals:
  - Request for Proposals (RFP)
  - Request for Qualifications (RFQ)

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Competitive Proposals: **RFP**

1. Request for Proposals (RFP) must clearly and accurately state the technical requirements for the goods and services required.
   - Specify the Scope of Services and Cost/Pricing Data
   - Note: Not allowable are cost plus a percentage of cost contracts
2. Grantee must publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;

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Competitive Proposals: **RFP**

3. Proposals must be solicited from an adequate number of qualified sources, consistent with the nature and requirements of the procurement;
4. Grantee must conduct a technical evaluation of the submitted proposals to identify the responsible entity;
5. Grantee must conduct negotiation with those entities deemed responsive and reasonable.
6. Grantee must award the contract to the most responsive and responsible entity.

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Competitive Proposals: **RFQ**

- Use this method if procuring for **architecture or engineering services**.
- Proposals are evaluated on qualifications of the entity.
- **Price is <u>not</u> used as a selection factor.**
- The grantee should review and rank each proposal received.
- Select the most qualified firm, then the firm can be asked for a price proposal

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Competitive Proposals: **RFQ**

- Document the basis for its determination of the most qualified competitor and the reasonableness of the contract price.

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Request For Qualifications

- Used for procurement of **A/E services only**
- ***Most qualified competitor is selected*** based on evaluation of qualifications
- Price is **<u>not</u>** used as a selection factor

Request For Proposals

- Must clearly and accurately state **technical requirements** for goods and services required
- Grantee **must publicize** the RFP and honor reasonable requests for an opportunity to compete
- Proposals must be solicited from an ***adequate number*** of qualified sources
- Grantee must conduct a technical evaluation of the submitted proposals
- Grantee must award the contract to the ***most responsive and reasonable*** offer

Noncompetitive/Sole Source

- 2 CFR 200.320 (f)
- This method is used under very limited circumstances
- Must receive approval prior to using this method.

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Noncompetitive/Sole Source

- When using this method, the grantee must demonstrate that another method of procurement was not feasible:
  - 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.

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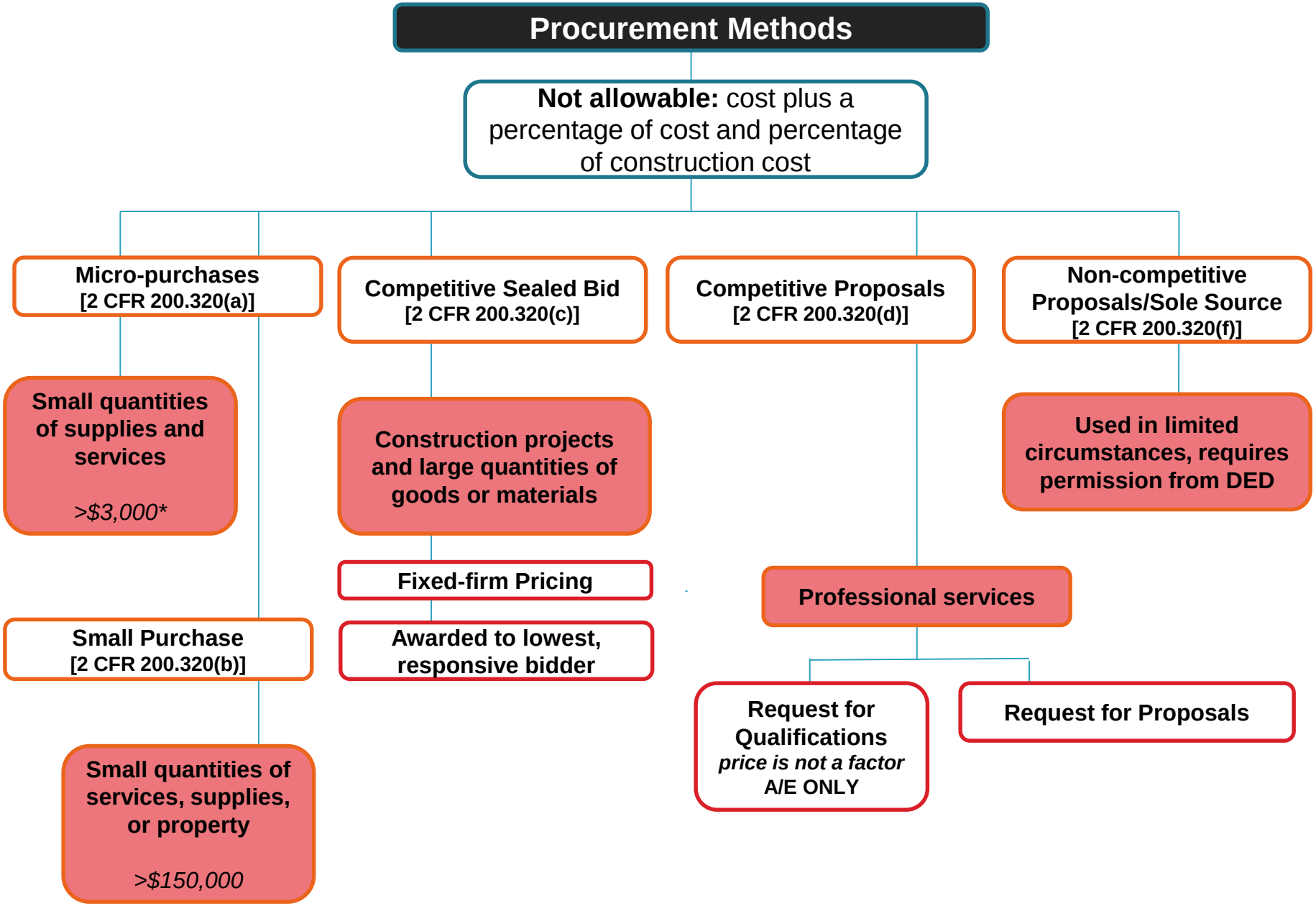

*Less than $3,000 or $2,000 in the case of acquisitions for construction subject to DBRA.

Unacceptable Procurement Practices

2 CFR 200.319 Competition / Part D

All procurement conducted open & free competition consistent with standards.

- **Contractors that …**
  - Develop or draft specifications,
  - Requirements,
  - Statements of work (SoW),
  - Invitations for bids, or
  - Requests for proposal.
- **…excluded from submitting a bid.**

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How Many Bids are Acceptable

- Generally, 3 bids are acceptable.
- If you do not receive this amount of bids, this may trigger 2 CFR 200.320 (f)(4). After solicitation of a number of sources, where competition is determined inadequate, it may be appropriate to convert the process into procurement by noncompetitive proposal.
- **Prior to awarding a contract under these conditions, grantee must consult with and obtain Department approval.**

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Sam.gov: Debarred/Ineligible Lists

- Every organization/business/contractor needs to be checked within sam.gov to ensure they are not debarred or ineligible from receiving federal funds.
- The following entities who receive funding would need to be active and registered in sam.gov
  - DED
  - Local Unit of Government
  - Nonprofit Organization
  - Businesses

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Federal Requirements
2 CFR 200 Subpart D

- Records and files
- Prequalified list of vendors/contractors
- Unfair competitive advantage
- Debarred/ineligible contractors no listed exclusions
- Written procedures for contractor selection
- Contract Pricing
- Protest Procedures
- Documenting Contractor Performance
- Code Of Conduct

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MBE/WBE and Section 3

- Assure that Minority Business Enterprises (MBE) and Woman Business Enterprises (WBE) are given the opportunity to participate in contract and procurement for supplies, construction, equipment and services.

- Section 3: ensure that preference for employment, training and contracting opportunities is directed to:
  - Local low-and very low-income persons, particularly those who receive federal housing assistance, and
  - Businesses that are owned by or substantially employ such persons (at least 30%).

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Is it Okay to Procure Before Award?

Yes! But the rules still apply

Document your process.

Follow procurement procedures.

Track the *entire* process used to procure the goods and services.

Policy should assure:

- Procurement is handled fairly and
- High quality goods/services were obtained at the lowest possible price and through an open and competitive process

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Except for General Administration Services,

<u>DO NOT</u> enter into contract prior to Release of Funds

All contracts (except for general administration activities) must be executed AFTER Release of Funds

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Document your process.

PROCUREMENT: PROFESSIONAL SERVICES

Grantee File
Maintain a separate file for each professional service.

- RFP/RFQ
- Documentation of Advertisement
- List of Firms Contacted Directly
- List of ALL proposals Received
- Copy of Written Evaluation Criteria
- Scoresheets/Written Evaluation for ALL Proposals
- Basis for Selection of Contract Type

Advertisement of RFP or RFQ → **Review and Scoring** → **Firm Selected**

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Contracts:
No Need to Reinvent the Wheel

This is a sample document only, and is not intended to replace advice from an attorney.

PROFESSIONAL SERVICE/CONSULTANT AGREEMENT

Project Title

THIS AGREEMENT made and entered into by and between the **Village/City/County** of _____, **Nebraska** (hereinafter referred to as the Village/City/County) and _____, (hereinafter referred to as the Consultant).

WITNESSES TH

Recommended contract language is detailed in Ch. 7 Procurement and Ch. 9 Construction

WHEREAS, the Village/City/County and the Consultant are desirous of entering into a contract to formalize their relationship, and

WHEREAS, pursuant to Title I of the Housing and Community Development Act of 1974, as amended through 1981 and 24 CFR 570, the State of Nebraska Department of Economic Development (the

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Contract Provisions

Professional Services Contract must include:

- Contract Term
  - Effective Date
  - Time of performance/ completion date
- Names/Addresses of the Firm and Grantee
- Method of Compensation
  - **Not allowable:** cost plus a percentage of cost and percentage of construction cost
- Detailed Description of Work
  - Scope of Work must have a clear relationship to Invoices/Billings
- Federal Standard Provisions
- Termination of Cause/Convenience
- Clause to Prohibit Transfer of Interest/Assignment
- Maintenance/Access of Records

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Document your process. **SELECTION/CONTRACT: PROFESSIONAL SERVICES**

Contract File
Maintain a separate file for each professional services contract.

- Description of selection method
- Statement Describing Basis of Selection
- Negotiation methods
- Cost and pricing data
- Contract for services
- Records of financial management
- Contract amendments (incl. rationale/reason)

Procurement Complete → **Contract Executed** → **Submit fully executed copy of all professional services contracts to Program Representative**

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Documents Commonly Missing :

- Proof of Advertising
- Copies of all Proposals Received
- Evaluations (Scores) of Responses
- Minutes of Government Action on Selection
- Executed Copies of all Contracts

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Common Mistakes Encountered:

- RFP does not contain clear criteria for judging responses
- No efforts made to obtain services from minority owned or female owned businesses
- Contracts executed prior to Release of Funds
- Contracts do not contain all the state/federal requirements

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Common Mistakes Encountered:

- Vague Scope of Services
- Vague Time of Performance
- References to Old Federal Regulations
- Proposals sent to firms, organizations, or individuals that do not provide the service requested or provide services outside membership jurisdiction
- Selection evaluations lack reason for selection

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Procurement Monitoring Common Issues:

- Missing or incomplete documentation associated with Direct Negotiation
  - For Admin Services:
    - Documentation provided at or prior to Special Conditions
  - For professional services (A&E only):
    - Meeting minutes showing the appointment and approval for three years

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Conflict of Interest

- Be aware of potential conflict of interest when conducting procurement.
- No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by federal award if he or she has a real or apparent conflict of interest.
- Conflict of interest arises when a financial or other interest in or a tangible personal benefit from a entity considered for a contract.

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