



# MICHIGAN NSP2 CONSORTIUM

## POLICY AND PROCEDURES MANUAL

### CULTIVATION & PROCUREMENT OF PROGRAM PARTNERS

#### ❶ PROCUREMENT PROCEDURES ❶

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## I. INTRODUCTION

When a Grantee elects to hire a contractor, whether to administer a program, complete a task or do construction, those contractors must be procured competitively. This chapter outlines the requirements for using federal funds to purchase materials, products or services under the NSP2 program and includes:

- Methods of Procurement
- Contractor Selection and Construction Management
- Procurement of Administrative Services
- Selection Process for Subrecipients
- Completing Procurement in Cost Effective and Streamlined Manner

To date, this chapter focuses on procuring program partners for:

- Program Set-up, i.e. procuring office supplies, materials and administrative services
- Acquisition

Over time, as MSHDA introduces modules, they will provide the respective process, checklists and templates for the procurement and cultivation of developers and program partners that align with the real estate development process and Policy and Procedures Manual Module.

### A. Federal Regulations

Both Grantees and subrecipients must follow federal procurement rules when purchasing services, supplies, materials, or equipment. The applicable federal regulations are contained in:

1. CFR Part 85 (located at <http://www.access.gpo.gov/nara/cfr/>)
2. OMB Circular A-102 (located at <http://www.whitehouse.gov/omb/>)
3. OMB Circular A-87 (located at <http://www.whitehouse.gov/omb/>)

### B. Procurement Responsibility

When it comes to spending taxpayer's money, no matter how little the amount, it is important to ensure that the prices paid are reasonable and necessary, and that Grantees and /or subrecipients are getting a good value. The essence of good procurement can be summarized as follows:

1. Identify and clearly specify standards for the goods or services the Grantee or subrecipient wants to obtain;
2. Seek competitive offers to obtain the best possible quality at the best possible price;
3. Use a written agreement that clearly states the responsibilities of each party;
4. Keep good records; and
5. Have a quality assurance system that helps Grantee or subrecipient get what it pays for.

## II. DEFINITIONS OF PROGRAM PARTNERS

**Grantee:** Cities, Land Banks and MSHDA as the public agency recipients of NSP2 from HUD.

**Developer:** Non-profit or for-profit organization that arranges and completes housing projects.

**General Contractor:** Non-profit or for-profit organization hired by Grantee to manage demolition and/or construction of NSP2-assisted unit. Often, General Contractors may also be a Developer, but the

distinction is that the Grantee maintains ownership of the property and hires the General Contractor/Developer only for their professional services in managing demolition and/or construction. General Contractor would adhere to the Competitive Sealed Bid Procurement process.

**Professional Service Provider:** Non-profit or for-profit organization hired by Grantee to provide professional services to support NSP2-assisted projects. Services include, but not limited to, pre-development, site preparation and marketing activities, such as appraisals, housing and lead-based paint inspections, title services, specification writing, housing counseling, marketing and technical assistance consultants.

**Subrecipient:** Public agency or non-profit organization that administers program for Grantee. A Grantee may provide these subrecipients with NSP2 funds for their use in carrying out agreed upon eligible activities. There must be a contractual agreement between the Grantee and the not-for-profit. For example, a not-for-profit organization could operate the entire scattered-site rental rehab program as a subrecipient. The Grantee does not have to procure the subrecipient.

**Beneficiary:** Homebuyer or Tenant of NSP2-assisted unit or in the case of Low-, Moderate- and Middle-income Area Benefit (LMMA) then Neighborhood.

### III. JOINT PROCUREMENT BETWEEN CITY AND PARTNER LAND BANK

Cities and their partner Land Banks have the opportunity to jointly procure goods and services in an effort to streamline activities and prevent duplication of services. CFR 24 85.36 (b)(5) states “ To foster greater economy and efficiency, Grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.”

For example, if the Land Bank is managing acquisition for a local NSP2 program, Land Bank may procure for Appraisal Services on behalf of both themselves and their partner City. Then both the City and Land Bank may use those Appraisal Service Providers for the purposes of NSP2. The City may do the same for Developers on behalf of both themselves and their partner Land Bank.

If they chose to do so, Cities and their partner Land Banks will negotiate joint procurement policies and guidelines in the City and Land Bank Operations Agreement. In cases where they do jointly procure, they will want to cite the City and Land Bank Operations Agreement and Procurement Process documentation in the respective Procurement File.

### IV. AMENDING EXISTING PROCUREMENT AGREEMENTS FOR USE OF NSP2 FUNDS

If a Grantee wants to perform work of a similar nature and has an existing, active contract for administrative services that was:

- Competitively procured in compliance with 24 CFR 85.36
- Contains the federal contract provisions (*See Federal Contract Provisions*)
- Contractor performed satisfactorily and demonstrates the ability to perform additional work,

Then the Grantee may amend the contract to include administrative services for the NSP program.

HUD recommends the existing procured contract agreement be broadly stated, i.e. procurement not limited to funding sources, target area, and dates of contract term, that follow NSP2 program definitions. For example, a CDBG appraisal services contract procured by Berrien County Land Bank for appraisal services in St. Joseph’s, Berrien County that expired December 31, 2008 may not be used for NSP2 Appraisal Services in Benton Harbor. However, a HOME, CDBG and NSP appraisal services contract procured by the City of Saginaw that serves all of Saginaw City and expires on December 31, 2010 may be used for the Saginaw NSP2 Program through December 31, 2010. However, the City of Saginaw will

need to reissue a Request for Proposal for Appraisal Services prior to December 31, 2010 to cover NSP2 Appraisal Services from January 1, 2011 through February 10, 2013.

## V. SOLICITATION OF MBE AND WBE BUSINESSES

To meet NSP2 procurement requirements, grantee must solicit the participation and make good faith efforts to award contracts to and hire professional service providers, developers, and contractors who are women and minority owned businesses. Efforts to encourage minority and female owned businesses in NSP2 should be made on a regular basis and documented. Methods of solicitation should include:

- Research and contact of MBE/WBE through contact of local professional organizations, Chamber of Commerce, and Better Business Bureau
- Research and contact of MBE/WBE by identifying and mapping them with NSP2 Target Areas
- Solicitation to be part of a directory through formal advertising, mailing and telephone contact
- Invitations to public meetings sent to MBE/WBE
- Mailings and telephone contacts, with documentation of such activities placed in the file.

A list of all contractors (names, addresses, phone and e-mail, if applicable) participating in the program must be kept by the grantee. Professional Service Providers, Developers and General Contractors will be selected for participation in the NSP2 program regardless of race, color, religion, familial status, age, national origin, sex, or disability.

The Fair Housing logo must be utilized in this and in all other advertisements pertaining to the grantee's NSP2 program.

The grantee must keep records and, when applicable, submit reports to MSHDA, documenting the good faith efforts taken and the results of these actions.

Directories for Minority Owned Enterprises and Women Owned Enterprises are found on MSHDA website under Policy Guidance at:

[http://www.michigan.gov/mshda/0,1607,7-141-5564\\_46919-171308--,00.html](http://www.michigan.gov/mshda/0,1607,7-141-5564_46919-171308--,00.html)

The Directories are titled:

- 7A – Minority Owned Business Directory
- 7B – Women Owned Business Directory.

Grantee will attempt to reach their local goal for participation by such firms in NSP2-funded projects.

## VI. SECTION 3

Local grantee must have a minimum annual contracting goal to award 10% of their NSP2 funds for building trades to Section 3 business concerns. Local Grantees must also have a minimum annual contracting goal to award 3% of their NSP2 funds for non-construction contracts to Section 3 business concerns. Construction Contracts awarded in amounts over \$100,000 must include provisions requiring a minimum numerical goal in which 30% of the new hires annually will be section 3 residents.

HUD includes safe harbor and compliance determinations with the regulation. In the absence of evidence to the contrary (i.e., evidence that efforts to the "greatest extent feasible" were not expended), if a Consortium member or contractor meets the minimum numerical goals shown above, the Consortium member or contractor is considered to be in compliance with Section 3 preference requirements.

When goals cannot be met, grantees and their contractors will be expected to demonstrate why it was not feasible to meet them. HUD evaluates compliance based on the grantee's ability to describe the efforts that it took to meet the training, hiring and contracting requirements and the impediments that incurred despite actions taken. At a minimum, a grantee that is unable to meet its Section 3 goals should sponsor or participate in upward mobility programs, hire eligible residents in trainee positions, or form Section 3 joint ventures with various local employment agencies.

The relative terms that assist Grantee in determining if they are identifying, soliciting and meet Section 3 Business requirements are:

**Section 3 Area Resident** is an individual that meets the following criteria::

1. A public housing resident;
2. An individual who resides in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended, and who is a;
  - a). Low-income person – any person with a gross household income less than 80% of the area median income (adjusted for household size) as established by HUD
  - b). Very low income person – any person with a gross household income less than 50% of the area median income (adjusted for household size) as established by HUD
3. A person seeking the training and employment preference provided by Section 3 bears the responsibility of providing the evidence (if requested) that the person is eligible for the preference.

**Section 3 Business Concern** is a business that meets the following criteria:

1. 51 percent or more owned by section 3 residents; or
2. Whose permanent or full-time employees include persons, at least 30 percent of whom are currently section 3 residents or within three years of the date of first employment with the business concern were section 3 residents; or
3. That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

**Section 3 Service Area** is the geographical area in which the persons benefiting from the Section 3 covered project reside. The priority service area should not extend beyond the NSP2 Census Tracts, but may be expanded to City first and then County, if necessary to meet Section 3 goals.

For more information on meeting Section 3 Requirements, please review the Section 3 Policy in the Cultivation and Procurement of Developers and Program Partners Module.

## VII. METHODS OF PROCUREMENT

### AN UPFRONT COST PRICE ANALYSIS MUST BE CONDUCTED PRIOR TO INCURRING ANY NSP COSTS AND/OR ISSUING BIDS OR AN RFP/RFQ!

Outlined below are the procedures for performing an upfront cost-price analysis.

1. **Create/obtain an initial cost estimate that contains a breakdown of the labor costs, material costs, and profit based on current market prices.** This information will allow the

procuring agency to evaluate reasonableness of the amount of profit built into the bid and the appropriateness of the material and labor costs. The federal regulations do not establish any maximums for these three categories; however, a reasonableness test should be made in relation to the scope of work being bid.

2. **Research and document the current industry standards for professional services, supplies, and materials.** This information will allow the procuring agency to evaluate the reasonableness of proposals that are received and/or material costs that are incurred including office supplies, equipment, materials, etc. Maintain analysis backup documentation in file.

Two or more responsible vendors must be willing and able to compete for each contract. **If only one bid is received, the Grantee must submit to their CDS a copy of the upfront cost price analysis, a copy of the bid received, and the solicitation process used.**

## METHODS OF PROCUREMENT CONTINUED

There are four (4) allowable methods of procurement: A) small purchases B) competitive sealed bids C) competitive proposal D) noncompetitive and sole source purchases. A synopsis of the methods and requirements follows; however, this information should not be considered a substitute for reviewing the applicable state laws and federal circulars.

### A. Small Purchase Procedures

<b>Small Purchase Procurement for:</b>	<b>Purchase of Office Supplies, Materials and Equipment to administer NSP2</b>  <b>Examples include, but are not limited to: Printing, Copying, and Computer Equipment, File Cabinets, Office Supplies, and Vehicle to inspect property and work directly in NSP2 target area</b>
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Small purchase procedures are those relatively simple and informal procurement methods appropriate for procurement of services, supplies, or other property, costing not more than \$100,000 or local threshold, whichever is less. This method is only to be used for services and supplies, not construction contracts. In the event that an administrator is purchasing materials that will exceed \$100,000 or local threshold, whichever is less, they must use the sealed bid process. Administrators shall comply with any local small purchase dollar limits \$100,000 or less.

#### 1. Requirements

Under the small purchases method, administrators send a request for quotes to potential vendors with a detailed description of the goods or services needed. In return, they receive competitive written quotations from an adequate number of qualified sources.

##### **Process for SERVICES under \$100,000**

- Each quote should include pricing information that allows the Grantee to compare costs across bidders and ensure cost reasonableness.
- At a minimum, two quotes shall be reviewed from qualified, reasonable firms.
- At a minimum, one quote attempt must be documented from an MBE/ WBE firm.
- Documentation of the quotes shall be maintained in the Grantee's files
- The award should be made to the lowest responsive and responsible source.

- If a firm is selected on a basis other than price, the reason for the selection must be well documented and maintained by the Grantee.

**Process for SUPPLIES & MATERIALS under \$100,000**

When the small purchases method is used for procuring supplies and materials, the Grantee may purchase on the **open market** or may **invite formal quotes** from no less than two vendors. If the Grantee purchases on the **open market**, at least two informal price quotations should be obtained using an informal price quote. (*See Informal Price Quote Template*) If the Grantee chooses to **invite formal quotes**, a request for quotation form should be completed (*See Formal Price Quote Template*).

## B. Competitive Sealed Bids

<b>Competitive Sealed Bids for:</b>	<b>Property acquired and held by Grantee for demolition and rehabilitation</b> <b>Grantee will acquire property and:</b> <ul style="list-style-type: none"><li>• Schedule blighted property for demolition</li><li>• Procure Developer/General Contractor to rehabilitate or build property per the specifications written by Grantee or its spec writing service provider. Note: After awarding bid to Developer/General Contractor, Grantee maintains ownership of property through rehabilitation and construction phase. Grantee will market and sell property</li><li>• Procure Developer to rehabilitate or build property per the specifications written by Grantee or its spec writing service provider. Note: After awarding bid to Developer, Grantee conveys ownership to Developer to rehabilitate and construct property. Developer will market and sell property.</li></ul>
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Sealed bids (Formal Advertising) should be used for all construction contracts or for goods costing more than \$100,000.

Competitive sealed bids are solicited through formal advertising. A fixed price contract is awarded to the lowest responsible bidder whose bid conforms to all the material terms and conditions of the bid invitation, technical specifications, and price. The contract award may be a fixed sum, or a unit price with ceiling, but it **cannot be a cost plus percentage of cost contract**. Such contracts are not allowed under federal regulations.

When using competitive sealed bids, the Grantee must provide all prospective bidders with a competitive description of the items or services to be purchased. This description should avoid specific brand requirements, although “brand name or equal” descriptions may be used as an example of functional or quality requirements. The procurement must lend itself to a firm fixed price contract that allows selection of a successful bidder primarily on price.

In addition, two or more responsible vendors must be willing and able to compete for the contract. If only one bid is received the Grantee must re-bid or perform a “cost-price analysis” to substantiate the reasonableness of the bid price received (See Subsection “Cost-Price Analysis” of this Chapter). Grantees should consult MSHDA about requirements for cost-price analysis.

The steps in the Competitive Sealed Bid process are:

1. **Preparation of the technical bid specifications.** These specifications should provide complete and accurate descriptions of materials, products, and services to be provided.  
  
The specifications should address any concerns identified during the environmental review. A copy of all plans or diagrams showing the location of underground utilities must be included in the bid and contract documents.
2. **Prepare the NSP2 bid terms and conditions.**
3. **If the project has been determined to require Davis-Bacon wages, secure the applicable wage rate decision(s)** and include them in the bid documents and construction contracts.
4. The **Grantee's attorney should review the bid documents** for the following:
  - Technical specifications.
  - City, town, or county, as well as federal and state requirements.
  - NSP2 related requirements.
  - Cost and pricing information.
  - Method of payment.
  - Advertisement for bid (as required by state law).
  - Bidders information specifying method of bidding, bid evaluation, and contract award.
  - Bid proposal form – including required financial statements
  - Bonding forms (bid, performance, and payment bonds), if applicable
5. **Bid requests must be published at least 14 days before the bid is due.** The bid must be published in a newspaper of general local circulation at least 14 days prior to bid due date.
  - Include the date and place fixed for receiving bids.
  - It should also include bonding and certification requirements and the place where plans and specifications are available for public review.
  - For Davis-Bacon projects, the current prevailing federal wage publication must be incorporated on the notice for all applicable procurement.
  - Require all bidders to submit a statement(s) of experience, proposed plans for performing the work, and equipment available.
  - **Include the date, place and time fixed for opening bids.**
6. **Preparation of a Bidder's List** - Grantees, in order to alleviate the publication requirement each time projects go out to bid, may want to create a bidders list. To create a bidders list, the Grantee must publish at least twice in a newspaper of general local circulation. The advertisements must be at least seven days apart, with the second publication made at least seven (7) days before the deadline for submitting a request to be placed on the bidder's list. The advertisement must specify any requirements contractors must satisfy in order to be placed on the bidders list. These requirements may include, but are not limited to, statements of experience, proposed plans for performing the work, documentation of insurance, licensing, and/or bonding (**obtain legal counsel**), **not being on HUD's debarred list**, and equipment available.

Each time an NSP2 activity goes out to bid, the Grantee must notify all contractors on the bidders list, as well as document efforts to solicit MBE/WBE **and** Section 3 business

enterprises. The notification should inform contractors where bid documents are available for review. At any point in time, a contractor may request to be placed on or deleted from the bidders list. Additionally, the **bidders list should be updated every year**. To update the bidders list, the recipient should follow the publication requirements as well as contact non-responsive contractors that are on the bidders list to see if they would like to remain on the bidders list.

7. Efforts must be made (and documented) to attract proposals from **small businesses, minority-owned businesses, and women's business enterprises** on a continuous basis. At a minimum MSHDA can provide a directory of such enterprises. Grantee will attempt to reach their local goal for participation by such firms in NSP2-funded projects.
8. **Maintain a log of bidders** who were sent **and/or** submitted bid documents.
9. **Amendments to the bid documents**, including revisions of wage rate decisions must be sent to all potential bidders who obtained the original bid documents. 10 days prior to the bid opening, the grantee checks wage determination to determine if it has been updated since publication of request for bid. If the wage determination has been updated, then the grantee must provide an addendum to the bid documents.
10. **All bids received during the bidding period must be logged** with the name of the bidder and the time and date of receipt. The sealed bids must be secured unopened in a safe place. **No bid should be accepted if it is late.**
11. **A public meeting must be held to open all bids except for projects on privately owned property.** All bids should be read aloud during this meeting. Maintain minutes of the meeting to document the project, time, and date of the bid opening, and the bidders and bid amounts in the order they were opened. A bid tabulation sheet must be completed showing the name and bid price of each bidder, and whether the bid was responsive.
12. **Review all bids to determine if they are legally and technically responsive.** Bidders must be evaluated on their ability to perform. The Grantee should consider the integrity, experience, performance history, and capacity of the contractor to perform within the stated time period, as well as cost, when making the decision.

The Grantee must award the contract per their local procurement process. The contract must be awarded to the lowest, most responsive and responsible bidder. Notice to proceed must also be provided to the successful bidder per the local procurement process. If the Grantee awards a contract to any vendor other than the lowest bidder, the Grantee must document in detail the reasons for not accepting the lowest bid price submitted.

If all the bids exceed the amount budgeted for the project, the Grantee cannot negotiate with bidders to bring the contract within the budget limits. If the Grantee has reason to believe that available funds are likely to be inadequate for the full scope of work proposed, the Grantee should ask all bidders to submit deductible alternatives so the project can proceed without a second bid solicitation. If deductible alternatives are requested, the document must specify the method and order in which deductible alternatives will be applied in determining the low bid. **Plans and specifications** must clearly show the deductible alternative(s).

The Grantee can reject all bids, provide needed funds from other sources, or re-allocate NSP2 funds. However, prior to a re-allocation of NSP2 funds, the Grantee may need to submit a budget modification request to MSHDA for approval.

13. Prior to contract award, the Grantee must complete the **Verification of Contractor/ Subcontractor eligibility** process. (*See Contractor and Sub-contractor Eligibility Process* for instructions on completing this process.)

14. Prior to contract award, the Grantee must ensure **all compliance and environmental clearances have been met.**
15. **Award the contract.** The contract must be awarded to the lowest, most responsive and responsible bidder. If the contract was not awarded to the lowest bidder, a detailed, written explanation must be prepared.
16. The **contract prepared** must include the following general administrative provisions:
  - a). Effective date of contract.
  - b). Names and addresses of Grantee and Contractor.
  - c). Names of representatives of Grantee and contractor who will act as liaison for administration of the contract.
  - d). Citation that Grantee has authority to enter into the contract.
  - e). Conditions and terms under which the contract may be terminated by either party and remedies for violation or breach of contract.
  - f). All required conditions under NSP2 and federal regulations for third-party contracts.
17. **All contracts** must include the following scope of services:
  - a). Detailed description of the extent and character of the work to be performed.
  - b). Time for performance and completion of contract services, including project milestones, if any.
  - c). Specification of materials or other services to be provided by both parties, (e.g., maps, reports, printing, etc.).
  - d). Access to Records Clause.
  - e). Conflict of Interest Clause.
  - f). Equal Employment Opportunity (E.O. 11246) clause.
  - g). Copeland "Anti-Kickback" Act clause.
  - h). Davis-Bacon Act clause.
  - i). Contractor Work House and Safety Standards Act clause.
  - j). Rights to Inventions Made Under a Contract or Agreement clause.
  - k). Clean Air Act clause.
  - l). Byrd Anti-Lobbying Amendment clause.
  - m). Debarment and Suspension clause.
  - n). Drug Free Workplace Requirements clause.
18. Contracts must incorporate **provisions for compensation**, including the basis for submission of billings and specification of the total contract amount.
19. **The contract must be executed by both the Grantee and the successful bidder.** Unsuccessful bidders must be promptly notified **in writing**. The successful bidder must meet all bonding requirements prescribed by Federal law. Grantees should seek the assistance of legal counsel in regard to bonding requirements.

20. Where the project is covered by Davis-Bacon wage rates (8 or more units), the Grantee must send a “Notice of Contract Award” to Grantee Labor Standards Officer within ten (10) days of contract award, if applicable. Copies should also be retained by the Grantee in its project files.
21. **For Davis-Bacon projects, a pre-construction conference must be held** to acquaint the contractor with federal requirements. Grantee staff will brief the contractor on the payment process, federal wage requirements, minority/women business development goals, Section 3 goals, forms to be used and how the Grantee may use this meeting, or a similar one, to review the contractor’s records and accounting systems. Pre-construction conference minutes must be prepared to document the subjects discussed at the meeting. A list of federal regulations pertinent to procuring and managing NSP2 construction contracts can be found in the Construction Management and Standards Chapter. This list may serve as the agenda for the pre-construction conference. *Pre-construction conferences are also recommended, but not required, for non-Davis-Bacon projects.*
22. **Establish a contract file** containing the following:
- Description of contractor selection method.
  - All bids received.
  - Bid tabulation.
  - Verification of contractor eligibility.
  - Contract for services.
  - Records of progress payments, including retainage.
  - Contract change orders, if any.
- The Grantee should use this file to monitor the contractor throughout the construction period.
23. Send a “**Notice to Proceed**” to the contractor. This document notifies the contractor that construction may begin.
24. For Davis-Bacon projects, send a “**Notice of Start of Construction.**” to Grantee Labor Standards Officer (See Construction Management and Standards Chapter).

### C. Competitive Proposal

#### Competitive Proposal for:

#### All procurement of professional services, which includes, but not limited to:

- Pre-development and Site Preparation Activities: Appraisals, Title Services, Licensed Real Estate Professional, Housing and Environmental Risk Assessment, Specification Writing, Demolition Facilitation Services
- Construction Services: Contracted Construction Manager
- Land Banking Services: Vacant Building Board-up and Maintenance and Vacant Lot Maintenance
- Marketing: Housing Counseling, Intake Specialist for Income, Buyer/Renter Affordability, and Financial Structuring, and Professional Sales and Rental Marketing
- Administrative Activities: Grants Management, Technical Assistance, and Consulting

The Grantee prepares a formal Request for Proposals (RFP) and requests proposals from at least two (2) or more qualified firms or individuals. Negotiations should be conducted with minimum of two of the responding sources.

If competitive negotiation is used, the following requirements apply:

1. **Preparation of Request for Proposals (RFP).** The RFP should include these elements, at a minimum:
  - a). Scope of Services - detailed description of the extent and type of work to be performed.
  - b). Time Requirements - performance period.
  - c). Considerations for Bidding - any additional requirements not pertaining to the scope of services that should be considered when preparing a proposal.
  - d). Proposal Instructions - the format of the proposal.
2. **Evaluation Criteria of Proposals.** Grantee must identify all significant evaluation factors (and their relative importance), including price or cost where required, technical expertise, past experience, price, staffing, etc. and how the proposals received will be scored. Evaluation criteria commonly used include the following, at a minimum:
  - a). 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.
  - b). Past record of performance and a list of other clients served including type of work, timeliness, quality requirements, and cost control. References submitted by interested bidders should be contacted.
  - c). Capacity of the firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
  - d). Familiarity of the firm with the type of problems applicable to the project.
  - e). Price. (The method, where price is not used as a selection factor, can only be used in procurement of architectural and engineering professional services. It cannot be used to purchase other types of services, even though architectural and engineering firms may be a potential source to perform the proposed work.)
3. Federal, state, and local regulations applicable to the award.
4. **The RFP must not be prepared or solicited by those firms or individuals who will be submitting proposals.**
5. Proposals must be solicited from at least two qualified sources to permit reasonable competition.
6. Efforts must be made (and documented) to attract proposals from **small businesses, minority-owned businesses, and women's business enterprises**. Grantee must meet their local goal for participation by such firms in NSP2-assisted projects.
7. **RFP must be publicized at a minimum on grantee website.** Grantee must retain documentation of the RFP distribution process.
8. **Evaluation of Proposals.** When proposals or statements of qualification are received, they should be evaluated by the Grantee based upon pre-established criteria. The review process for both statements of qualification and proposals in response to a Request for Proposal should be thorough, uniform, and well-documented. The review process is to be conducted by a

committee or board which, to the greatest extent possible, includes persons with the appropriate technical skills. Reviewers must have no conflicts of interest with the firms or individuals under review, such as family relationships, close friendships, or business partnerships.

9. **Negotiations** may be conducted with more than one of the sources submitting proposals, if awarding contracts to multiple proposals. Retain verifiable documentation recording the negotiations process.
10. **Award(s) must be made to the responsible offeror(s)** whose proposal will be the most advantageous to the project, considering price and other factors. Unsuccessful proposals must be promptly notified. When the award is made to a responsible proposal(s) not having the lowest price, the Grantee must document its reasons for not selecting the lowest proposed price.
11. The Grantee must then **establish a contract file** that contains the following:
  - a). A description of the method used to select architect, engineer, or consultant.
  - b). Qualification statements or proposals received.
  - c). Negotiation methods.
  - d). Cost and pricing data supporting the contract.
  - e). Verification of contractor eligibility.
  - f). Contract for services.
  - g). Records of progress payments, including retainage withheld.
  - h). Contract change orders, if any.

#### **D. Non-Competitive and Sole Source Purchases**

Competitive procurement should be used whenever possible. Non-competitive proposals may be used only when the other three methods are not feasible; award files must document such a determination. This method shortens the procurement process; however, there must still be written bid specifications for construction and scope of services for professional service contracts.

Non-competitive negotiation may only be used in one of the following circumstances:

1. Public urgency will not permit a delay for competitive solicitation.
2. The item desired is available from only one source.
3. After solicitation of a number of sources, competition is determined inadequate.

Any community wishing to utilize sole source procurement must first obtain approval from MSHDA. This can be accomplished by sending a letter that details the efforts undertaken to obtain multiple bids and the reason sole source procurement was selected. Sole source procurement is discouraged and must be well documented to avoid denial or disallowance by MSHDA.

### **VIII. REQUIRED CONTRACT PROVISIONS**

#### **A. All NSP2-funded Contracts**

All NSP2-funded contracts must include the following provisions:

1. Effective date of contract.
2. Names and addresses of Grantee or subrecipient and contractor.

3. Names of representatives of Grantee or subrecipient and contractor who will act as liaison for administration of the contract.
4. A citation of Grantee's authority to enter the contract.
5. Contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
6. Provisions for termination by the Grantee, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
7. Scope of Services:
  - a). Detailed description of extent and character of the work to be performed.
  - b). Time for performance and completion of contract services, including project milestones, if any.
  - c). Specification of materials or other services to be provided by both parties, (e.g., maps, reports, printing, etc.).
  - d). An access to records clause including a provision that all negotiated contracts awarded by recipients shall include a provision to the effect that the state, the recipient, HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the contractor which are pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.
  - e). Conflict of Interest Clause.
  - f). Provisions for compensation of services, including the basis for submission of billings as the work progresses and specification of the total contract amount.
8. Bonding and Insurance Requirements, if applicable
9. Federal Standards Provisions
  - a). Equal Employment Opportunity - Executive Order 11246: Equal Opportunity Clause, goals for female and minority participation and implementing regulations
  - b). Rights to Inventions Made Under a Contract or Agreement
  - c). Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended
  - d). Byrd Anti-Lobbying Amendment (31 U.S.C.1352)
  - e). Debarment and Suspension (Executive Orders 12549 and 12689)
  - f). Statement of Assurances

## **B. Construction Contracts and Subcontracts for Davis-Bacon Projects**

All contracts for Davis Bacon Projects must include the following provisions:

10. Federal Wage Determination with modifications
11. Federal Labor Standards Provisions (HUD 4010)

- a). Davis-Bacon Act
  - b). Contract Work Hours and Safety Standards Act
  - c). Copeland “Anti-Kickback Act”
12. Contractors and Subcontractors Certifications (HUD 1421 and 1422)
  13. HUD 2516 – HUD Contractor Subcontractor Activity Form
  14. OFCCP Subcontractor Notification
  15. EEO-1 Report
  16. CC-257 Monthly Utilization Report
  17. U.S. Department of Labor Notices (jobsite): WH 1321, WH 1462, and OSHA 2203 publications

## IX. BONDING REQUIREMENTS

Federal requirements at 24 CFR Part 85 require payment and performance bonds for construction contracts in excess of \$150,000 (note that the federal “simplified acquisition threshold” was recently increased from \$100,000 to \$150,000, resulting in changes to the point at which bonding is required. However, some references on the HUD website still refer to the \$100,000 figure.)

However, 24 CFR 85.36(a) also requires that states follow their own standards when those standards are more stringent than the federal requirements.

Furthermore, state law (MCL 129.201) require payment and performance bonds for all construction contracts of \$50,000 or more in the case of publicly owned buildings—which would include an NSP funded project where title is held by an local unit of government or land bank. Notably, contractors, subcontractors, and suppliers cannot place construction liens on publicly owned properties either.

There is no specific state law requirement for payment and performance bonds in the case of construction contracts for privately held buildings. In such cases the construction lien act helps protect subcontractors and suppliers.

So, the trigger payment and performance bonding differs depending on who owns the property:

When a unit of government (including both Cities and Land Banks) holds title to the property, payment and performance bonds will be required for all construction contracts of \$50,000 or more. (Note that this analysis holds true regardless of whether the project is funded with NSP2, NSP1 other HUD funding, or even state funding, so grantees may need to evaluate their non-NSP programs that involved real estate development to ensure they are in compliance with state law.)

When NSP funds are being provided to a developer that holds title to the assisted property, payment and performance bonds are required for all construction contracts of \$150,000 or more.

For construction contracts or subcontracts exceeding \$50,000 on publicly owned properties or for construction contracts or subcontracts exceeding \$150,000 on developer owned properties with NSP2 funds in the project, the following is required:

1. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other

negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Where bonds are required, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

**OR**

In lieu of acquiring the payment and performance bonds, Grantee will accept an irrevocable line of credit listing Grantee as the sole beneficiary and equal to (a) the greater of the contract award amount or (b) 25% of the total construction contract. The line of credit must be issued for the entire construction period plus one (1) year following construction completion.

## **X. CONFLICT OF INTEREST**

The grantee must comply with federal Conflict of Interest regulations when awarding contracts assisting households. This Section addresses the following:

- General Prohibitions
- Penalties for Violations Include Repayment and/or Ineligibility
- Who is Covered
- Exception for the Preceding Persons
- Provisions for Owners, Developers, or Sponsors

The Conflict of Interest guidelines are based on Community Development Block Grant (CDBG) and HOME regulations found in 24 CFR 570.489 and 24 CFR 570.611 (CDBG) and 24 CFR 92.356 (HOME). In addition, these Conflict of Interest rules must be adhered to when purchasing supplies, equipment, construction, and other related services. [See 24 CFR 85.36 and 24 CFR 85.42 (the Common Rule).]

### **A. General Prohibitions**

None of the employees, officers, agents, or subrecipients of NSP2 funds shall participate in the selection, award, or administration of a contract involving NSP2 funds if a Conflict of Interest, either real or apparent, would be involved.

None of the employees, officers, agents, or subrecipients of NSP2 funds shall accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to any subagreement.

### **B. Penalties for Violations Include Repayment and/or Ineligibility**

The penalty for violations of these provisions could include repayment of NSP2 funds and/or ineligibility for future participation. The penalty, sanction, or other disciplinary action will be determined by MSHDA.

## C. Who is Covered

Any person who is an employee, agent, consultant, officer, or elected official or appointed official of the grantee, state recipient, or subrecipient are covered by the Conflict of Interest provisions if they currently or in the past:

- Have any functions or responsibilities regarding NSP2-assisted activities; or
- Are in a position to participate in a decision-making process, or gain inside information with regard to these activities; or
- Have a financial interest in any contract, subcontract, or agreement with respect to an NSP2-assisted project or the proceeds of the contract, subcontract, or agreement, either for themselves or for those with whom they have family or business ties.

This prohibition is in effect during their tenure and for one year thereafter.

## D. Exception for the Preceding Persons

Upon written request to MSHDA and approval by HUD, employees of the grantee receiving NSP2 funds, their agents, consultants, officers, elected officials, or appointed officials and their immediate families may be granted an exception to these provisions on a case-by-case basis.

The designated signatory of the Grant Agreement must submit to your MSHDA CD Specialist in writing the request for exception. When the conflict involves NSP2 funds, MSHDA will forward the request to HUD and HUD will make the determination.

### 1. Requests for an Exception

The request for an exception must include the following information:

- The name, title, and classification of the person, and a brief description of the person's position as it relates to the NSP2-assisted project or contract award;
- A disclosure of the nature of the Conflict of Interest and proof that the disclosure has been made public; and,
- A legal opinion from the grantee, or if the recipient of NSP2 funds is not a unit of local government, the attorney representing the recipient, stating that there would be no violation of state or local law if the exception were granted.

### 2. Factors to be Considered for Exception

In determining whether to grant the requested exception, HUD and MSHDA shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the **cumulative effect** of the following factors as applicable, so please address all factors in making your request for exception.

- a). Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- b). Whether an opportunity was provided for open competitive bidding or negotiation;
- c). Whether the person is a member of a group or class of low and moderate income persons intended to be the beneficiaries of the NSP2-assisted activity, and the exception would permit the person to receive generally the same interests or benefits as are being made available or provided to the group or class;

- d). Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- e). Whether the interest or benefit was present before the affected person was in their position as an employee, agent, consultant, officer, or elected official or appointed official of the grantee, state recipient, or subrecipient of NSP2 funds;
- f). Whether undue hardship would result either to the state, recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- g). Any other relevant considerations.

## E. Provisions for Owners, Developers, or Sponsors

There are additional Conflict of Interest provisions that cover nonprofit or for-profit owners, developers, or sponsors of NSP2-assisted projects.

- No owners, developers, or sponsors of an NSP2-assisted project (or officer, employee, agent or consultant of the owner, developer, sponsor) whether private, for-profit, or nonprofit may occupy an NSP2-assisted unit in a project.
- This provision does not apply to an owner-occupant of a single-family home or to an employee or agent of the owner or developer of a rental housing project who occupies an NSP2-assisted unit in a project as a project manager or maintenance worker.

### 1. Request for Exceptions

Upon written request from a housing owner, developer, or sponsor, MSHDA and/or HUD may grant an exception to the preceding provisions on a case-by-case basis when it determines that the exception will serve to further MSHDA and/or HUD's purposes and the effective and efficient administration of the owner's or developer's NSP2-assisted project.

### 2. Factors to be Considered for Exception

- a). Whether the person is a member of a group or class of low and moderate income persons intended to be the beneficiaries of the NSP2-assisted activity, and the exception would permit the person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- b). Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- c). Whether the provisions cited in the Recovery Act regulations regarding tenant protections (prohibited lease terms, termination of tenancy, and tenant selection) are being observed;
- d). Whether the required affirmative marketing requirements are being observed and followed; and
- e). Any other factor relevant to the determination, including the timing of the requested exception.

Any questions regarding this policy bulletin should be directed to your CD Specialist.

## XI. GRANTEE AND CONTRACTOR DEBARMENT PROCEDURES

1. A person and/or contractor may be debarred if any of the following have occurred within a reasonable period of time before institution of debarment proceedings:

- a). Serious or repetitive violation of any federal or state law, or MSHDA or grantee program regulation or instruction.
  - b). Serious or repetitive failure to perform contractual obligations or carry out representations or warranties to MSHDA or to any Grantee under any program administered by MSHDA or grantee.
  - c). Acts of misconduct indicating a lack of business integrity directly affecting responsibility to participate in MSHDA programs, including but not limited to false representation, embezzlement, theft, forgery, fraud, negligent service, bribery, falsification of records, and receipt of stolen property.
  - d). Serious or repetitive violation of any non-discrimination or equal opportunity requirements in connection with any program administered by MSHDA.
  - e). Debarment from any agency of the federal government or of any state government.
2. Grantees and contractors receiving awards or compensation under Michigan NSP2 program who commit serious or repetitive violations of NSP2 regulations or this *Policy and Procedures Manual* are subject to such debarment proceedings. Those Grantees and/or contractors who are debarred by MSHDA from further participation in Michigan NSP2 program will be given the right to appeal such debarment.
  3. The U.S. Department of Housing and Urban Development (HUD) has also established debarment procedures. Contractors receiving awards or compensation under Michigan NSP2 program who commit serious or repetitive violations of NSP2 regulations may also be debarred by HUD.

## XII. REQUIRED COVERAGE

Grantees, subrecipients and developers will be required to provide proof of adequate builder's risk insurance during construction and property insurance following construction for the assisted property throughout the affordability period of the award. The following requirements are listed under each program type:

- For new construction, builders risk and/or property insurance that includes coverage for work done by the contractors is required throughout the construction period.
- For rehabilitation, builders risk, contractor liability, and/or property insurance that includes coverage for work done by the contractors is required throughout the construction period.
- For rental, activities, adequate property insurance must be maintained throughout the affordability period.

### A. Policy Requirements

- If a contractor liability policy is used, it must name grantee as additionally insured.
- If a builders risk policy is used, it must name grantee as both loss payable and additionally insured.
- If a homeowner policy is used, nothing needs to be added to the policy. Once the lien is placed on the home, the entity placing the lien automatically becomes a loss payable.
- The builder's risk or contractor liability policy can be in the name of the grantee, contractor, owner of the property, subgrantee, or subrecipient.

- The builders risk coverage must be for the replacement value of the property, increasing as appropriate throughout the construction period to the full replacement value at construction completion.
- The value of the contractor liability must be, at a minimum, for the replacement value of the property. Additionally, if the contractor employs persons, the policy must also include workers compensation.
- The value of the property insurance must be, at a minimum, for the replacement value of the property.

### XIII. NSP2 RETENTION AND CUSTODIAL REQUIREMENTS

1. Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three (3) years from award close-out or end of affordability period, whichever date is later, with the following qualifications:
  - a). If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.
  - b). Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after final disposition.
  - c). When records are transferred to or maintained by MSHDA, the three-year retention requirement is not applicable to the Grantee.
  - d). Records for real property and equipment acquired with federal funds shall be retained for three (3) years after final disposition.
2. MSHDA shall request transfer of certain records to its custody from Grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, MSHDA may make arrangements with Grantees to retain any records that are continuously needed for joint use.
3. MSHDA, HUD, Office of Inspector General, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of Grantees and sub recipients to make audits, examinations, excerpts, and transcripts.
4. Unless otherwise required by law, no federal grantor agency shall place restrictions on Grantees that will limit public access to the records of Grantees that are pertinent to an award except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 USC 552) if the records had belonged to the grantor agency.

### XIV. LIST OF CHECKLISTS AND TEMPLATES

-  Informal Quote Template (Word)
-  Formal Quote Template (Word)
-  Contractor Eligibility Process
-  Federal Contract Provisions

 Grants Administration Plan