



# Procurement & Section 3 Requirements

Brittney Hickom, Compliance Officer

  
Georgia<sup>®</sup> Department of  
**Community Affairs**  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM



# Calling all Consultants

The CDBG consultants list is provided to local governments to assist in the procurement of professional services, such as; grant administration, grant writing, engineering, and architectural services. DCA would like to update its CDBG consultants list and is requesting updated contact information for grant writers and administrators, engineers, architects, and other services providers wishing to be solicited by potential applicants of CDBG funds. Please visit the **Compliance & Administration** section of our website to complete the survey or use the link and QR code below.



# Procurement

- ✓ Standards
- ✓ Methods
- ✓ Sole Source Requirements
- ✓ Contract Requirements



# Procurement Standards

DCA's procurement policies and procedures implement the requirements of 24 CFR 570.489 (g), which says the State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition.

- Identification of Methods of Procurement and their applicability
- Prohibition of cost plus a percentage of cost & percentage of construction costs methods of contracting
- Assurance that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations
- Subrecipient and contractor determinations shall be made in accordance with the standards in 2 CFR 200.330.

# Procurement transactions will be provided in a manner providing full & open competition

## Avoid:

- ✘ Unreasonable requirements
- ✘ Noncompetitive pricing practices
- ✘ Noncompetitive awards to consultants that are on retainer contracts
- ✘ Organizational conflicts of interest
- ✘ Specifying only a brand name product
- ✘ Any arbitrary action in the procurement process



## Procurement Standards

### Documented Conflict of Interest Policy, which states:

No employee, officer, or agent...

“May participate in the selection, award, or administration of a contract supported by a Federal award if a real or apparent conflict of interest is present.”

Persons covered = Employees, agents, consultants, officers or elected/ appointed officials of state, Local government and/or recipient and subrecipient.

# Prohibited Conflicts

Persons with CDBG responsibilities, decision-making power or information may **NOT:**

- Obtain a financial interest or benefit from CDBG activity
- Have any interest in contract or subcontract
  - Applies to family members and business ties
  - Applies during tenure and 1 year after

Example: Grant Administrator cannot assist grantee with drafting statements of work or RFPs for grant administration if they intend to submit proposal.

- May explain process, discuss instructions/process publicly available on DCA website

# Standards – Selection Procedures

- ✓ Accurate description of the technical requirements for material, product, or service without restricting competition
- ✓ Clear requirements and evaluation factors
- ✓ The review of proposed procurement actions by Recipient officials to avoid purchasing unnecessary or duplicative items.
- ✓ A cost or price analysis for every procurement action
- ✓ Consideration of contractor integrity, compliance with public policy, record of past performance, and financial and technical resources in the selection process



# Methods of Procurement

- **Small purchase:** Procurements under \$100,000 (if allowed by local policy).
  - Require that price or rate quotations be obtained at least three (3) sources.
  - Not appropriate for procurement of administrative or professional services
- **Competitive Proposals:** Professional Services
- **Competitive Sealed Bids:** Public Works Construction
- **Sole Source:** Requires DCA Approval
  - The item or service is available from only one source;
  - Urgent public need will not allow for the delay caused by advertising;
  - Although a number of bids were solicited, only one response was received.

# Knowledge Check

Which of the following does not qualify as a Conflict of Interest

- A. The Local Government's Attorney resides inside the proposed Target Area.
- B. The Commissioner's Mother resides two blocks outside of the Target Area.
- C. The Mayor owns property within the Target Area.
- D. The County Clerks son is employed by the Water Authority who regularly attends meetings to discuss the proposed project.

# Professional Services Procurement Competitive Proposals (pre-application)



# Procurement – Competitive Negotiation

❑ CDBG payments for Professional services are subject to the “competitive negotiation” requirements of 24 CFR 570.489 (g).

❑ Private grant writers/administrators

❑ Engineers and Architects

❑ Not applicable if contracting with Regional Commissions



# Competitive Negotiation

## Avoid the appearance of a conflict of interest:

- Prior to application submission, both grant application services and grant administration services should be solicited using the same Request for Proposal (RFP).
- For Engineering/Architectural services, preliminary reports and design and construction services should all be procured upfront using the appropriate RFP or Request for Qualification (RFQ) process.

# Step - by - Step Process

1

Establish or appoint a local Selection Review Committee

2

Determine the Selection Criteria

- Prepare a Ratings Criteria Score Sheet

3

Develop the Request for Proposals (RFP) Package

- May choose Request for Qualifications (RFQ) for engineering/ architectural services
- Include the evaluation factors, level of importance, deadlines, and contact information.

4

Publicize the RFP or RFQ.

- Allow 30 days for responses.
- If equal to or greater than \$100,000 place on Georgia's Procurement Registry, (HB 322)

5

Distribute the RFP or RFQ to known providers

- Consultants/Administrators sent to at least seven (7) known providers.
- Engineering/architectural sent to at least ten (10) known providers.
  - Email delivery – use Request Delivery Receipt & Request Read Receipt / Mail delivery – send Certified Return Receipt

6

Review & Rate Proposals

- Give priority, to the greatest extent feasible, to Section 3 businesses, if you have chosen to advertise for them

7

Approve the Selection

- Consult city or county attorney about recommendation and proposed contract
- Based upon established reasons and attorney's recommendation, obtain full council/commission approval and execute contract.
- Notify unsuccessful applicants in writing

8

Maintain Complete Records

# Complete Records List

- RFP/RFQ
- Proof of Publication
- Distribution List
- Copies of Proposals Received
- Scoring Sheets
- Meeting Minutes – Council/Board Approval
- Executed Contracts
- Correspondence with Section 3 businesses (if applicable)



Statements of qualifications and proposals are being requested from consultants with a strong record in successfully assisting local governments with grant writing for and implementation of Community Development Block Grant (CDBG) programs. Responding firms should be qualified to provide grant administration and related services including, but not limited to: Preparation of the grant application; Preparation of the Environmental Review Record; Preparation of draw/disbursement requests; Assistance with financial administration of grant funds and record keeping; Assistance with holding public hearings; Assistance with any required acquisition following the Uniform Relocation Assistance and Real Property Acquisition Act (URA); Assisting the engineer/architect with preparation of bid documents, advertising and conducting the bid opening; Assisting the city/county with Davis-Bacon and related labor requirements including weekly payroll review and employee interviews; Assisting the city/county with meeting Affirmatively Furthering Fair Housing (AFFH) requirements; and Preparation of close-out documents.

**CITY/COUNTY** plans are to contract with a reputable consulting firm for grant writing, and, if funded, for administration services, for a FY20  CDBG project. The purpose of the project is to provide **DESCRIBE PROPOSED IMPROVEMENTS**.

Information which should be submitted for our evaluation is as follows:

- 1) History of firm and resources
- 2) CDBG experience, including other DCA grant programs
- 3) Capacity to complete scope of work
- 4) Current workload
- 5) Scope and level of service proposed
- 6) Experience with similar projects and list of references
- 7) Fees associated with grant writing, and grant administration, if the project is funded
- 8) Statement of Qualifications Form
- 9) Applicable Section 3 Certification forms, if claiming Section 3 Status

*\*This project is covered under the requirements of Section 3 of the HUD Act of 1968, as amended and Section 3 Business Concerns are encouraged to apply. (Only include this statement and evaluation factor #9 if soliciting for Section 3 Businesses).*

**CITY/COUNTY** also abides by the following laws as they pertain to HUD Assisted Projects: Title VI of the Civil Rights Act of 1964; Section 109 of the Housing and Community Development Act of 1974, Title 1; Title VII of the Civil Rights Act of 1968 (Fair Housing Act); Section 104(b)(2) of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973 as amended; Title II of the Americans with Disabilities Act of 1990 (ADA); the Architectural Barriers Act of 1968; and the Build America, Buy America Act (BABA).

Interested parties should request copies of the Statement of Qualifications Form and Section 3 Solicitation Package prior to preparing and submitting their proposal. Proposals should be received no later than **5:00 PM on [30 DAYS AFTER PUBLICATION]**. Proposals received after the above date and time may not be considered. We reserve the right to accept or reject any and all proposals and to waive informalities in the proposal process. Questions, Statement of Qualifications and Section 3 Certification form requests (i.e., request for Section 3 preference), and proposal packages should be submitted to the name and address listed below:

**CLIENT CONTACT**  
**CLIENT**  
**ADDRESS**  
**Phone:**  
**Email:**



\*\*\*\*\*

**Appendix  
Sample Email Request**

\*\*\*\*\*  
**Copy and paste the "email" below, including logos, to send to your selected Grant to select the Request for Delivery Record. Please also remember to attach the Section 3 DCA Section 3 Solicitation Package (**

-----  
**\*\*\*Subject:** PLEASE RESPOND: CITY/COUNTY  
 FY20\_\_ CDBG/EIP/RDF  
**FROM:** CITY/COUNTY, Georgia  
**RE:** CITY/COUNTY Solicitation Package  
 FY20\_\_ CDBG/EIP/RDF

**PLEASE REPLY TO THIS EMAIL** to let us know you will be submitting a proposal.

Thank you,  
 CITY/COUNTY CONTACT  
 CITY/COUNTY NAME

**CITY/COUNTY  
 REQUEST FOR  
 ADMINISTRATIVE & RELATIONSHIP**

Statements of qualifications and proposals are required. Firms with a strong record in successfully assisting local governments with the implementation of Community Development Block Grant projects should be qualified to provide grant administration services not limited to: Preparation of the grant application; Record; Preparation of draw/disbursement records; Administration of grant funds and record keeping; Assistance with any required acquisition following the Uniform Real Property Acquisition Act (URA); Assisting with the preparation of documents, advertising and conducting the bid process; and Bacon and related labor requirements including

interviews; Assisting the city with the preparation of the (AFFH) requirements; and Preparation of the

CITY/COUNTY plans are to be provided if funded, for administration services. The purpose of this is to provide TYPE OF IMPROVEMENTS

**Information which should be provided:**

- 1) History of firm and record
- 2) CDBG/EIP experience
- 3) Capacity to complete projects
- 4) Current workload
- 5) Scope and level of services
- 6) Experience with similar projects
- 7) Fees associated with projects funded.
- 8) Statement of Qualifications
- 9) Applicable Section 3 Business Concern Certification

*\*This project is covered under the provisions of the amended and Section 3 Business Concern Certification statement and evaluation factors.*

The City/County also abides by the provisions of the Projects: Title VI of the Civil Rights Act of 1964 (Community Development Block Grant Act); Section 104(b) of the Housing Act; Section 504 of the Rehabilitation Act of 1990 (Americans with Disabilities Act); and the Buy America, Buy American Act (Buy American Act).

Proposals should be received by the deadline. Proposals received after the deadline will not be considered. The City/County reserves the right to accept or reject any proposal without explanation. Questions should be directed to the contact person and address listed below:

**CITY/COUNTY CONTACT**  
**CITY/COUNTY ADDRESS**  
**Phone:**  
**Email:**



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**Engineer  
 Sample Statement**

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NAME OF FIRM: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

1. Years in Business in Present Form: \_\_\_\_\_

2. Firms History and Resource Capability to complete projects: \_\_\_\_\_

3. Titles, Names, and Addresses of all Office personnel: \_\_\_\_\_

4. List categories in which firm is legally qualified to perform work where applicable. \_\_\_\_\_

5. Does your firm carry Errors and Omissions Insurance? \_\_\_\_\_

6. If you were awarded the design, bid phase of a project, would you be able to complete the project? \_\_\_\_\_

7. Does your firm charge for the preliminary design? If yes, what would the charge be? \$\_\_\_\_\_ Can your firm meet the draft PER deadline? \_\_\_\_\_

8. List up to five (5) projects which demonstrate your firm's ability to complete projects. Name, location, owner, year, contract amount.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

9. List key personnel (with qualifications) likely to be involved on these projects and explain their specific role in CDBG work.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. List three (3) references for the Firm.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

11. Are you a Section 3 Business Concern? Yes \_\_\_\_\_ No \_\_\_\_\_  
 If yes, the Attached Section 3 Business Concern Certification, Previous Certification and Action Plan must be filled out, signed, notarized, and submitted with your proposal.

Is the signed and notarized Section 3 Business Concern Certification, Previous Certification and Action Plan attached to your proposal? Yes \_\_\_\_\_  
 If no, you will only need to submit the Section 3 forms if you are the successful proposer.

12. Certifying that:

Mr./Mrs./Ms. \_\_\_\_\_ (signature) being duly sworn deposes and states that he/she is the \_\_\_\_\_ (title) of \_\_\_\_\_ (name of firm) and that answers to the foregoing questions and all statements herein contained are true and correct.

## ENGINEERING/ARCHITECTURAL SAMPLE RATINGS CRITERION

\*\*\*\*\*

CONTACT: \_\_\_\_\_

NAME OF FIRM: \_\_\_\_\_

FIRM ADDRESS: \_\_\_\_\_

*Evaluate the Architectural and/or Engineering Firm based on the points assigned to each of the following selection criterion*

CRITERION	CIRCLE POINTS			POINTS ASSIGNED
	POOR	GOOD	EXCELLENT	
1. Ability to provide the disciplines necessary for this project.	0	1	2	_____
2. Firm's experience with this type of construction.	0	1	2	_____
3. Key personnel experience with this type of construction	0	1	2	_____
4. Quality of reference information.	0	1	2	_____
5. Has Firm had experience with Community Development Block Grant (CDBG) projects?	0	1	2	_____
6. Is price competitive?	0	1	2	_____
<b>TOTAL POINTS</b>				_____

Firm can meet PER/PAR deadline?       Yes     No

Firm carries Errors and Omissions insurance?       Yes     No

COMMENTS ON WHY FIRM SHOULD BE SELECTED:

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NAME: \_\_\_\_\_

DATE OF REVIEW: \_\_\_\_\_

NAME	DATE SENT	RECEIVED	SCORE/COMMENTS
██████████	10/02/2019	YES	65
██████████	10/02/2019	NO	
██████████	10/02/2019	NO	
██████████	10/02/2019	NO	
██████████	10/02/2019	YES	70
██████████	10/02/2019	NO	
██████████	10/02/2019	NO	
██████████	10/02/2019	NO	
██████████	10/02/2019	NO	
██████████	10/02/2019	YES	67
██████████	10/02/2019	YES	72 Selected as Project Architect
██████████	GA Procurement Registry Request	NO	

# Procurement – Other Considerations

Unsuccessful grant applicants from the previous year can use same grant administrator and engineer or architect:

- Must be for previous application cycle
- Any older procurements will not be valid, and a new advertisement and solicitation of RFPs is required
- Followed acceptable procurement process



# Phased Implementation

- BAP now applies to:
  - FY2023 CDBG Projects containing iron and steel with a costs greater than \$250K
  - FY2024 awards, BAP will include Iron & Steel and Specifically Listed Construction Materials. Specifically Listed Construction materials consists of metals other than iron and steel (non-ferrous metals), lumber, composite building materials, and plastic and polymer-based pipe and tube (e.g., PVC pipe).
  - FY2025 awards, BAP will include the same material groups from FY2023 and FY2024 awards in addition to All Other Construction Materials and Manufactured Products. All Other Construction Materials consists of glass, drywall, and other construction materials. Manufactured Products include a material or supply used in an infrastructure project that is not iron or steel or a construction material.
- BAP does **not** apply to:
  - Non-infrastructure funding.
  - Infrastructure projects that do not contain steel
  - Infrastructure projects with a total costs of \$250K or less
  - CDBG-DR, CDBG-MIT, CDBG –CV projects
  - Projects qualifying under another HUD general waiver

# HUD Construction Materials Groups

HUD’s waiver breaks construction materials into two groups for the purposes of HUD’s phased implementation: “specifically listed” and “all other construction materials.”

- **Iron & Steel** – 2023 Awards and beyond
- **Specifically Listed** – 2024 Awards
  - Metals other than iron or steel (non-ferrous metals)
  - Lumber
  - Composite building materials
  - Plastic and polymer-based pipe and tube (e.g., PVC pipe)
- **All Other Construction Materials**
  - Glass
  - Drywall
  - Other construction materials
- **Manufactured Products**
  - A material or supply used in an infrastructure project that is not iron or steel or a construction material.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	All Other Construction Materials	Manufactured Products
CDBG Formula Grant	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from FY24 appropriations	As of the date HUD obligates new FFA from FY25 appropriations	As of the date HUD obligates new FFA from FY25 appropriations

# BABA's Impact

## Pre-award considerations

- Availability of products covered by the Buy America Preference (BAP)
- Cost of products covered by the Buy America Preference (BAP)
- Impact on PER/PAR cost estimates
- Grant Administrator Knowledge

# Post Award Procurement

## Competitive Sealed Bids: Public Works Construction





# Competitive Sealed Bid

DCA, under the authority of 24 CFR 570.489(g), has adopted Title 36, Chapter 91 of the Official Code of Georgia, Georgia Public Works Construction Law

- Traditional design–bid–construct method

*\*Alternative methods require DCA approval*

- Advertising Requirements (including Section 3 & BABA)

- **Contract opportunity must be posted in the governing authority's office**

- Contract opportunity must be advertised in either the legal organ of the government, or on an Internet website of the government entity or one identified by the entity

- Place on Georgia's Procurement Registry, if over \$100,000 (HB 322)

# Competitive Sealed Bid – Advertising Requirements

- If advertised in newspaper, opportunity must be advertised at least two times:
  - The first advertisement must be at least 4 weeks prior to the bid opening date; and
  - The second advertisement must follow at least 2 weeks after the first advertisement
- Advertisements placed on an Internet website should run continuously for at least four weeks.
- Each advertisement shall include such details and specifications as will enable the public to know the extent and character of the bid or proposal opportunity

## Section 3 Advertising Requirements

HUD Section 3 Mailing List

Construction Contract Opportunities must be posted in at least **3 locations**

GPR, your website, Dodge Room, newspaper, DOL, DFCS

Section 3 Policy  
(page 11)

All ads must include this Section 3 language: “This is a Section 3 Covered Contract. Section 3 Business Concerns are encouraged to apply.”

# BABA Bid Requirements

## Advertisement for Bids

- This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget’s Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.

## Instructions to Bidders

- Any request for substitute or “or equal” shall include the Manufacturer’s Certification of compliance with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. If the Instructions include a Federal requirements section, include the following: BABAA requirements apply to this project.

## Bid Form

- Bidder’s representation section: Bidder is familiar with all laws and regulations that may affect cost, progress, and performance of the work, including BABAA requirements.

## Description

Sealed bids for the construction of Street Paving and Drainage Improvements will be received by the Ben Hill County Board of Commissioners for the County's FY2023 CDBG at the Board of Commissioners' Office, 402-A East Pine Street, Fitzgerald GA 31750 until September 17, 2024 @ 2:00PM, at which time and place they will be publicly open and read. All work on project must be completed within 180 consecutive calendar days. Plans and specs may be obtained from Hofstadter & Associates, Inc., 4571 Arkwright Road, Macon, Georgia 31210. No bid will be considered unless sealed and filed with Ben Hill County and accompanied by a Bidder's Bond of 10% of the bid amount. This contract is subject to the requirements of Build America, Buy America (BABA) unless accepted by a waiver. Ben Hill County is committed to Affirmatively Further Fair Housing. This project is covered under the requirements of Section 3 of the HUD Act of 1968. This contract opportunity is a Section 3 Covered Contract. Section 3 Business Concerns are encouraged to apply.

GPR landing page

## Advertisement for Bid

Ben Hill County is committed to Affirmatively Further Fair Housing. This project is covered under the requirements of Section 3 of the HUD Act of 1968. **This contract opportunity is a Section 3 Covered Contract Section 3 Business Concerns are encouraged to apply.** Ben Hill County is committed to providing all persons with equal access to its services, programs, activities, education and employment regardless of race, color, national origin, religion, sex, familial status, disability or age.

### **Build America, Buy America (BABA) Contract Clause**

All requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, shall be complied with if applicable to the infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

# Competitive Sealed Bid- Bonding Requirements

## State requirements (contracts \$100,000+):

- A performance bond from contractors executed in connection with each contract.
- A payment bond on the part of the contractor for 100% of the contract price.

## Federal requirements (contracts \$100,000+):

- A bid guarantee from each bidder equal to 5% of the bid price.
- A performance bond from contractors for 100% of the contract shall be executed in connection with each contract.
- A payment bond on the part of the contractor for 100% of the contract price.

## DCA requirements:

- adequate contractor's liability insurance from all contractors
  - \$25,000 property and \$50,000 bodily injury coverage



# Section 3 Solicitation package is completed & submitted to Recipient prior to award for contracts \$200,000+

CDBG Grantee:	Grant Number:	Contract Amount:		Reviewer:	Date of Review:			
<input type="checkbox"/> Contractor/Subcontractor Affidavit	(Compliance with OCGA 13-10-91) Applicable to All Contracts and Subcontracts							
<input type="checkbox"/> Section 3 Clause (see note)	All Contracts							
<input type="checkbox"/> Provision for Remedies	All Contracts							
	ARCHITECTURAL and ENGINEERING SERVICES	HOUSING REHAB		CONSTRUCTION CONTRACTS				
		<input type="checkbox"/> Less than 8 Units	<input type="checkbox"/> 8 or More Units	<input type="checkbox"/> Over \$250,000	<input type="checkbox"/> Over \$100,000	<input type="checkbox"/> Over \$40,000	<input type="checkbox"/> Over \$10,000	<input type="checkbox"/> Over \$2,000
<input type="checkbox"/> Provision for Termination	If Over \$10,000	If Over \$10,000	If Over \$10,000	•	•	•	•	
<u>Executive Orders 11246/11375</u>								
<input type="checkbox"/> EEO Clause	If Over \$10,000	If Over \$10,000	If Over \$10,000	•	•	•	•	
<input type="checkbox"/> EEO Specifications				•	•	•	•	
<input type="checkbox"/> Affirmative Action Clause				•	•	•	•	
<input type="checkbox"/> Non-Segregated Facilities				•	•	•	•	
<u>Federal Labor Standards</u>								
<input type="checkbox"/> Copeland Anti-Kickback			•	•	•	•	•	•
<input type="checkbox"/> Davis-Bacon Clause			•	•	•	•	•	•
<input type="checkbox"/> Wage Rate from DCA			•	•	•	•	•	•
<input type="checkbox"/> Work Hours & Safety			If Over \$100,000	•	•			
<input type="checkbox"/> Performance & Payment Bonds				•	•	•		
<input type="checkbox"/> 5% Bid Bond				•	•			
<input type="checkbox"/> Clean Air/Water Clause				•	•			
<input type="checkbox"/> Build America, Buy America				•				
<input type="checkbox"/> Provision for Disability Accessibility (if a building)	•							
<input type="checkbox"/> Provision for Ga. Energy Code (if a building)	•							

# BABA's Impact

## Post-Award Considerations

- Documenting products county of origin
- Bid Requirements – Advertising, Instructions, Bid Forms
- Contract Requirements
  - Architect/ Engineer - obtaining and maintaining all BABA documentation (particularly manufacturers' certifications) during construction, which shall be transferred to the recipient.
- Construction Contract Clause

# Build America, Buy American (BABA)

## Demonstrating Compliance

- Recipients will ensure the products delivered to the construction site are accompanied by proper documentation that demonstrate compliance with the law and made available to the funding authority upon request.
- Signed certification letter from the manufacturer for the project is the most direct and effective form of compliance documentation for ensuring products used on site are BABA-compliant prior to their installation
- Basic elements of sufficient documentation:
  - Project name, project location, contract number, or project number
  - Description of product(s) (simple explanation sufficient to identify the product(s)), or an attached purchase order, invoice, or bill of lading.
  - Attestation statement referencing Infrastructure Investment and Jobs Act (“IIJA”) or the Bipartisan Infrastructure Law (BIL) and American Iron and Steel (AIS) requirements
  - Manufacturing location (s)
  - Signature of representative certifying knowledge of manufacturing processes.

# Demonstrating Compliance Cont'd

- Architect/ Engineer contract should include, as a basic service, obtaining and maintaining all BABA documentation (particularly manufacturers' certifications) during construction, which shall be transferred to the recipient. The architect or engineer will need to certify to this action at the project's end.
- At a minimum, the following must be included in all construction contract documents: All requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, shall be complied with if applicable to the infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.
- Contractors must provide manufacturers' certifications for all BABA compliant items to the responsible party before a request for reimbursement to the agency is made.



Quality – Service – Commitment – Delivered.  
August 29, 2024

PO Box 300  
700 Goldman Drive  
Cream Ridge, NJ 08514  
609 758 0800  
fax 609 758 1163  
enggg@sigmaco.com

Sigma Corporation  
700 Goldman Drive  
Cream Ridge, NJ 08514

Subject: Build America, Buy America certificate for Warm Springs Water, Columbus, GA,  
Contractor: Crawford Grading, Quote# 10210279

I, Satheesh Manicka Chandrasekaran, certify that all processes for manufacturing and fabricating the following products and/or material quoted for the above project is in full compliance with the AIS requirement as mandated in HUD's CDBG Program. It is further certified that all processes for manufacturing and fabricating the following products and/or material quoted for the subject project is in full compliance with the ARRA Buy American clause (Section 52.225-2) and The Buy America Act.

Item, Products and/or Materials:

- |  |     |
|--|-----|
| 1. 6x13" Tyler Union C153 SOLxSWL Adpiter    | 14  |
| 2. 6" Tyler Union C153 MJxSWL Tee            | 7   |
| 3. 6x2" Tyler Union C153 MJ Tapped Plug      | 4   |
| 4. 24/36 Tyler Union Screw VBX Less Lid      | 20  |
| 5. 5 1/4 Tyler Union STD VBX CVR WTR         | 20  |
| 6. 6" Ford Meter Box Wedge Restraint for PVC | 45  |
| 7. 6" Birmingham Fastener A242 MJ Bolt Packs | 112 |

Such process took place at the following location:

Tyler Union	Anniston, AL
Ford Meter Box	Pell City, AL
Birmingham Fastener A242 Material	Saukville, WI
Birmingham Fastener T-hd Bolts	Birmingham, AL
Birmingham Fastener Nuts	St. Joe, IN

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by,

Satheesh Manicka Chandrasekaran  
Engineer, SIGMA Corporation



Mueller Co. LLC  
1200 Abernathy Road NE  
Suite 1200  
Atlanta, GA 30328

phone: 770-206-4200  
fax: 770-206-4271  
muellercompany.com

### Build America, Buy America Act Certification

August 29, 2024

**Project:** CRAWFORD GRADING WARM SPRINGS WATER PROJECT  
**Location:** WARM SPRINGS, GA  
**Order Nr.:** 53813343  
**Letter Ref. Nr.:** GFC - 5233

We certify as of the date hereof, the following iron and steel products shipped/provided to the subject project are in full compliance with the Build America, Buy America Act ( BABAA) requirement as mandated in the Infrastructure Investment and Job Act (IIJA) Pub. L. No. 117-58-§§ 70901-52.

Items, Products and/or Materials:

	Part#	Description	Size	Qty	Manufacturing Location
1.	423-544551	Hydrant	4' BURY	14	Albertville, AL
2.	06AA236123LN	Gate Valve - Resilient Wedge	6"	19	Chattanooga, TN

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Sincerely,

Karli Peadro  
Government Funding Compliance Specialist  
kpeadro@muellerwp.com

# Ineligible Procurement Practices

## National Pollutant Discharge Elimination System (NPDES)

- When the NPDES inspection work is included in the construction contract, the general contractor must be allowed to bid this line item without restrictions on price or inspection firm unless otherwise required by regulation. Keep in mind that ineligible procurement practices are subject to sanctions including repayment to DCA of disallowed costs. (Appendix O, Applicants Manual)



# Knowledge Check

What is the third most common procurement method used in our program, that has not been discussed?

- A. Small purchase
- B. Competitive Proposals
- C. Competitive Sealed Bids
- D. Sole Source

# Sole Source Requests

- Chief Elected or Authorized Official's request letter
- Description of Procurement Methodology
- Tear Sheet of the Bid Advertisement or RFP/RFQ
- Local Government's Attorney Opinion
- Sealed Bid Procurements
  - Local Government's Engineer/Architect states that the one bid response's prices were reasonable and appropriate based on independent cost estimates.
- Professional Services Procurement
  - list of the active, qualified consultants or engineers/architects that were mailed the RFPs/RFQs (7 for grant administrators and 10 for engineers/architects)
  - certified return receipt documentation or adequate email documentation

**This approval must be received prior to the application deadline for professional services.**

# Common Procurement Mistakes



- Did not allow at least 30 days for responses
- Failed to advertise the Competitive Sealed Bid at the Governing Authority's office.
- Did not retain proof of solicitation delivery (read receipts) or a memorandum of the process
- Meeting minutes indicated the highest scored respondent was not selected without explanation
- Sole Source (professional services) approval was not obtained prior to application submission

# Section 3



Jobs



Training



Contracts

# Section 3 of the Housing and Development Act of 1968



“To ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing.”

Section 3 of the Housing and Urban Development Act of 1968

[DCA Section 3 Policy](#)



# Section 3 Final Rule

## Requirement

- Employment, training, and contracting opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low-and very low-income persons.

## Final rule published September 29, 2020

- 24 CFR Part 75

## Promotes sustained employment and career development

- Focuses on labor hours instead of new hires

## Aligns Section 3 reporting with standard business practices

- Consistent labor-hour tracking mechanism (Davis-Bacon)



# Applicability



Section 3 requirements apply to **all** housing rehabilitation, housing construction or other public construction projects

- Threshold is met if the total amount of CDBG assistance exceeds \$200,000
- Applies to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

A Project is defined as a site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

## Procedures promoting outreach to Section 3 workers & Business Concerns

When *hiring, contracting or job training opportunities* arise in connection with housing rehabilitation, housing construction or other public construction.

- Recruitment of Section 3 Workers & **Business Concerns**

# Definitions

## Section 3 Worker

- ❑ Any worker who currently fits, or when hired within the past five years fit, at least one of the following criteria:
  - Low- or very low-income, as established by HUD's income limits;
  - Employed by a Section 3 business concern
  - YouthBuild participant

## Targeted Section 3 Worker

- ❑ Worker employed by a Section 3 business concern
- ❑ Low and very low-income workers residing within **neighborhood or service area of the project** (neighborhood service area – one-mile radius of project site, or if fewer than 5,000 people, radius on project containing 5,000 people).
- ❑ YouthBuild participants

# Service Area as Defined in 24 CFR 75.5

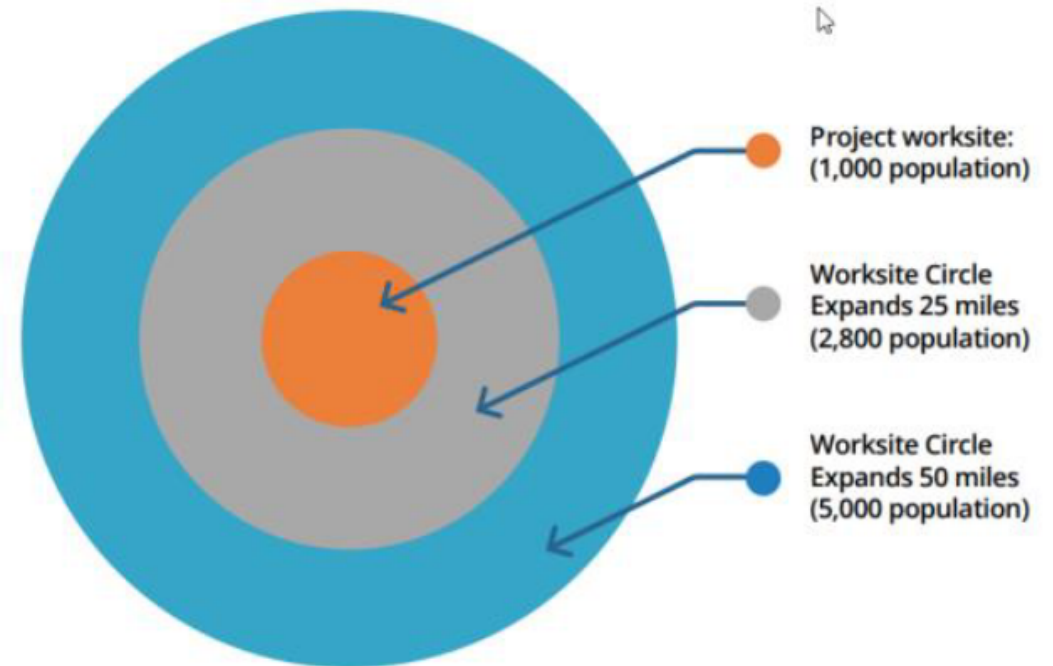
A. *Service Area* = an area within one mile of the Section 3 project

OR

B. If < 5,000 people live within one mile of Section 3 project,

Then, *Service Area* = an area within a circle centered around the Section 3 project site that encompasses 5,000 people.

\*According to the most recent U.S. Census



# Definitions

## **Section 3 Business Concern** (meets criteria within the past 6 months)

- 51% or more owned by low- or very low-income persons
- OR**
- 75% or more labor hours are performed by Section 3 workers who are low or very low-income persons or YouthBuild participants
- OR**
- 51% or more owned by current residents of public housing

# Benchmarks

- **Focuses Reporting on Key Outcome Metrics: New Benchmarks**
  
- **Safe Harbor Benchmarks**
  - 25% of all labor hours must be performed by a Section 3 Worker
  - 5% of all labor hours must be performed by Targeted Section 3 Workers
  - A labor hour = hours worked by all workers employed on a Section 3 project
  - Set by Notice and amended periodically as necessary

<https://www.federalregister.gov/documents/2020/09/29/2020-19183/section-3-benchmarks-for-creating-economic-opportunities-for-low--and-very-low-income-persons-and>



# How are benchmarks achieved?

- ✓ Outreach to Section 3 workers and businesses
- ✓ Documentation of Outreach
- ✓ Give a Preference in hiring and contracting to Section 3 workers and businesses

# Recipient Responsibilities

## Employment & Training

- Ensure employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) where project is located
- Priority of opportunities
  - Section 3 workers residing within the service area or the neighborhood of the project, and
  - Participants in YouthBuild programs.

## Contracting

- Ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.
- Priority of contracts awarded
  - Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
  - Youthbuild programs.

## Document actions taken to comply

## Reporting

## Recipients also must implement at least one (1) of the following actions:

- ❖ Facilitating an opportunity fair annually for contractors to meet interested low-income & very-low-income residents for possible employment.
- ❖ When employment opportunities arise or are anticipated, posting at all job sites funded by DCA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than 24” x 24” in Black ink and specifically read:

“This project is covered under Section 3 of the HUD Act of 1968 which requires that any new hiring opportunities first be directed to low- and very low-income persons in this community. Please contact (list the contact person name and number) for information on any employment, contracting and sub-contracting opportunities.”

# Operating Procedures

- Post positions in at least three community sources
  - local community newspaper; widely distributed newspaper; local housing authority, or homeless agency, or/local low-income housing community; local workforce board; the local DFCS office; and the local GA Public Health County office
- Use of temporary agencies
  - Placements must self-certify and be offered Preference
- Post contracting opportunities in at least three community sources
- Contractor must convey history of compliance
- Contract language regarding compliance for those that claim a Preference
  - Preference must be maintained or subject to penalties
  - Contractors may be banned from future participation

# Solicitation Package

## Section 3 Self-Certification and Action Plan

- Allows a contractor to claim preference or
- Allows a contractor to decline preference

## Previous Section 3 Compliance Certification

- Allows a contractor to certify compliance on previous work

## Assurance of Compliance Certification/Action Plan

- List subcontractors (if known)
- List of workforce
  - Changes will constitute NEW hires
  - Provides “Before and After” picture for compliance documentation
  - Provides record keeping requirements

## Self-Certifications – Business & Resident



# Solicitation Package

- Contract award exceeding \$200,000 & Claiming Preference
  - Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification portions at time of BID
- Contract award exceeding \$200,000
  - Entire package completed and submitted prior to AWARD
- Contract award less than \$200,000
  - Package is made available and submitted prior to AWARD
  - If claiming a preference
    - Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification portions at time of BID/PROPOSAL



# Reporting Requirements

## QUARTERLY EXPENDITURES AND PROGRESS REPORT

**Section 3 – Labor Hours** - Please enter unreported hours. If submitting the 2nd Quarter report (ending 6/30) enter the cumulative hours as well. The cumulative reporting period is 7/01 - 6/30.

	Quarterly Hours	Annual Report - Quarter ending 6/30
Total Labor Hours		
Section 3 Target Worker		
Section 3 Worker Hours		

**A Section 3 Target Worker is:** Employed by a Section 3 business concern, OR Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5, OR a YouthBuild Participant.

**A section 3 worker is:** A low or very low-income worker, OR employed by a Section 3 business concern, OR a YouthBuild participant.

Please enter unreported hours. If submitting the 2nd Quarter report (ending 6/30) enter the cumulative hours as well. The annual reporting period is 7/01 - 6/30.

- **Reporting of labor hours**
- (i) The total number of labor hours worked;
- (ii) The total number of labor hours worked by Section 3 workers; and
- (iii) The total number of labor hours worked by Targeted Section 3 workers.
- Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31

# Qualitative Reporting

## QUARTERLY EXPENDITURES AND PROGRESS REPORT

### Section 3 – Efforts

Please indicate which efforts the Recipient has executed to recruit or provide training and opportunities to Section 3 Businesses and Workers by checking all that apply.	
<input type="checkbox"/>	<b>Outreach efforts to generate job applicants who are CDBG Funded workers</b>
<input type="checkbox"/>	Direct, on-the-job training (including apprenticeships)
<input type="checkbox"/>	Indirect training such as arranging for, or paying tuition for, off-site training
<input type="checkbox"/>	Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching)
<input type="checkbox"/>	<b>Outreach efforts to identify and secure bids from Section 3 business concerns</b>
<input type="checkbox"/>	Technical assistance to help Section 3 business concerns understand and bid on contracts
<input type="checkbox"/>	Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns
<input type="checkbox"/>	Provided or connected residents with assistance in seeking employment including; drafting resumes, finding job opportunities, connecting residents to job placement services.
<input type="checkbox"/>	Held one or more job fairs
<input type="checkbox"/>	Provided or connected residents with supportive services that can provide direct services or referral services
<input type="checkbox"/>	Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation
<input type="checkbox"/>	Assisted residents with finding childcare
<input type="checkbox"/>	Assisted residents to apply for/ or attend community college or a four-year educational institution
<input type="checkbox"/>	Assisted residents to apply for/ or attend vocational/technical training
<input type="checkbox"/>	Assisted residents to obtain financial literacy training and/or coaching
<input type="checkbox"/>	Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns
<input type="checkbox"/>	Provided or connected residents with training on computer use or online technologies
<input type="checkbox"/>	Other, specify: _____

If unable to meet goals, must describe efforts taken to meet

Examples include:

- Held job fairs
- Conducted on-the job training
- Outreach efforts to public housing residents
- Connected residents with supportive services
- Helped residence apply for technical training
- Provided technical assistance to Section 3 Businesses

# Knowledge Check

As the Recipient, which of the following are your responsibility in order to foster Section 3 opportunities, to the greatest extent feasible?

- A. Employment & Training
- B. Contracting
- C. Document actions taken to comply
- D. Reporting
- E. All of the above

# Procurement Resources

- GMA's Public Works Construction Guidebook: <https://www.gmanet.com/GMASite/media/PDF/publications/publicworks.pdf>
- ACCG's Public Works Construction Guidebook: <https://www.accg.org/docs/Constructioncontracts.pdf>
- CDBG Manuals & Local Government Officials' Handbook: <https://www.dca.ga.gov/node/2341/documents/2254>
- HB322: <https://gov.georgia.gov/document/signed-legislation/hb-322pdf/download>
- DCA's Professional Procurement Instructional Materials: <https://www.dca.ga.gov/node/3741/documents/10>
- Build America, Buy America: <https://www.arc.gov/resource/buy-america-guidelines/>



# Section 3 Resources

- Section 3 Solicitation Package: <https://www.dca.ga.gov/node/6088> & Appendix 2
- New Rule FAQs: <https://www.hud.gov/sites/documents/11SECFAQS.PDF>
- Section 3 New Rule: [Federal Register](#)
- HUD's Website: <https://www.hud.gov/section3>
- Section 3 Guidebook: <https://www.hudexchange.info/programs/section-3/section-3-guidebook/welcome/>
- Income Limits: <https://www.huduser.gov/portal/datasets/il.html>

# Thanks!

Brittney Hickom, Compliance Officer

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