

**BUSHWICK UNITED HEAD
START**

**PROCUREMENT
POLICY
AND PROCEDURES**

FISCAL DEPARTMENT

Revised 2009

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1. INTRODUCTION

The procurement framework discussed in this document details the process of purchasing the necessary goods and services that Bushwick United Head Start requires for its operations. Our main objective is to maximize the scarce monetary resources available to our program through the use of procedures that ensure selection of the most relevant and best quality goods and services at economical prices. The processes used to achieve this objective are designed to be as efficient as possible while ensuring fairness, transparency and equality in selection, defining a code of ethics that maintains accountability and high standards.

Bushwick United Head Start take due cognizance of the regulations outlined in 45 CFR 74.40 (Procurement Standards) and 45 CFR 92.36 (Procurement), in developing this framework. Where they exist, our procurement procedures are informed by the Grantee (the Administration for Children's Services (ACS) otherwise they follow the federal guidelines or general industry best practices. In the special case of construction projects, the grantee's guidelines apply, taking account of those regulations contained in 29 CFR parts 3 and 5.

2. PROCUREMENT POLICY

It is the policy of Bushwick United Head Start to utilize its financial resources to procure goods and services that are deemed allowable and allocable in a manner that promotes economic efficiency, transparency, fairness and equality while adhering to the highest ethical standards set by the federal government, the Administration for Children's Services (ACS), our Sponsoring Board and the Delegate Agency Policy Committee (DAPC).

3. PROCUREMENT PROCEDURES

Bushwick United Head Start's procurement procedures prohibit the purchasing of unnecessary items with federal funds. Unnecessary items are defined as those goods and services that are not relevant to the work of the agency. While the cost allocation circulars provide a measure of guidance, where there are areas of uncertainty about specific items, the sponsoring board, DAPC and management will collaborate to achieve consensus on the procurement option.

In the pursuit of achieving economic gains, where possible, cost comparisons between lease and purchase alternatives will be conducted to determine which would be the most economical and practical procurement alternative.

Procurement practices explicitly discourage the use of "brand name or equal" descriptions that bidders are required to meet when submitting proposals for consideration. In most cases special consideration is given to those products and services which conserve natural resources and protect the environment and which are also energy efficient. Our agency, where possible, utilizes the services of small businesses, minority-owned firms, and women's business enterprises.

The specific type of procuring instrument used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) depends on the tiered procurement schedule that Bushwick United Head Start utilizes.

3.1 Procurement Code of Ethics

Bushwick United Head Start maintains a strict code of conduct governing the performance of all employees, officers, agents and Board members engaged in the procurement process. According to this code, none of the parties identified above is allowed to be involved in the administration of a contract supported by Federal (or state) funds if a conflict of interest, real or apparent, would be involved. Such a conflict arises when the employee, officer, agent or Board member or any member of his/her immediate family, his/her partner, or an

organization which employs, or is about to employ, any of the above, has a financial or other interest in the company (or related to any consultant) selected by the agency.

The code of conduct for procurement further stipulates that, under no circumstances will employees solicit or accept gratuities, favors or anything of monetary value from vendors, potential vendors or contractors, or parties to sub-agreements. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the agency or by contractors or their agents. These may include termination and litigation.

Bushwick united Head Start has a tiered procurement schedule that allows for:

- Small purchases not exceeding an individual item value of \$5,000;
- Goods and services exceeding \$5,000 but less than \$50,000; and
- Goods and services over \$50,000 including construction and maintenance contracts.

3.2 Small Purchase Procurement Procedure

For those small items with a list price of less than \$5,000 no formal competitive bidding process is required. The procedure adopted is the same for goods and consultant services having a value in this range. The procurement procedure is as follows:

1. The Administrative Director or his designee determines the need for the product
2. Cost comparisons are made utilizing a variety of media, including the internet, telephone request for quotations, referrals from other agencies and vendors. A minimum of three (3) vendors must be compared.
3. Selection is based on price, quality of product, after sales support (where applicable), accessibility, track record of the vendor and whether the company is a small business, minority or women's business enterprise.
4. Consistent with the Grantee's inventory control procedure, Computers, printers, copiers, and any other office machines purchased with Head Start funds, with an acquisition cost of Five Hundred (\$500) Dollars or more, and an expected life of one (1) or more years are inventoried and procured using a process of evaluation of the

same product against competing vendors. An exception is made in the case of a General Services Administration (GSA) schedule holder.¹

5. The comptroller is usually responsible for the procurement of minor office supplies. In the case of Classroom supplies, the administrative director, together with the education directors determine the supplies to be purchased. Subsequent to this, the procedures identified from (2) above is followed.
6. When a vendor is selected, the procedures for ordering goods and services identified in the fiscal policies and procedures manual is followed.

3.3 Procedure for procuring goods and services valued between \$5,000 and \$50,000

This procedure is utilized to procure those individual items that are valued at or above \$5,000 but less than \$50,000. For those service and consultant contracts within this range, the explicit approval of the Grantee must be given before any contract can be entered into. Selection of consultants or the contracting of services is performed in much the same way as that identified for small purchases with a few exceptions. These are:

- Request for proposals may be sent out to selected contractors based on reputation, reference or location
- Contractors may have a unique skill or specialty that is directly applicable and customized to our needs and hence the selection of alternatives may be time consuming and costly; and
- Emergencies may arise that require the use of a contractor or repair company for which there is little or no time to compare alternatives.

Aside from services, capital equipment is usually procured using this procedure. Capital equipment is defined as any article of tangible nonexpendable property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Contracts, on the

¹ For a discussion on the Grantee's requirement for inventory, see the Fiscal Policies and Procedures Manual. The federal government has deemed that purchasing from a General services Administration (GSA) schedule holder minimizes costs associated with procurement as schedule holders are already determined to have the lowest costs, and federally approved goods and services.

other hand are usually defined as a written means of ensuring that a particular service or range of services are delivered in a fixed amount of time and usually at a fixed price.

Consistent with our policy, Bushwick United Head Start utilizes the process of competitive bidding for the procurement of capital and contracts in excess of \$5,000. Notwithstanding the exceptions identified earlier, the solicitation of bids (in the case of contracts) may be done through an advertised open process, through a request for proposals or tenders or through a comparative analysis of vendors and prices.

The process of soliciting competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. Requests for proposals are advertised, or selected (pre-qualified) vendors contacted and invited to submit an RFP (request for proposal). In general, the grantee evaluates the RFP and assists with the selection of a contract.

In the case of equipment, the make and model is compared (usually through the internet) and price evaluations conducted. For those items that do not have advertised costs, the RFP process is applied where potential vendors are required to submit an RFP to supply the equipment and any accompanying follow up service contract. There is a similar evaluation like that of small purchased and the criteria of price, reliability, quality and follow –up service used.

Usually, for the purchase of equipment as well as the selection of contracts in this category, prior approval for the expensing of funds must be given by the Grantee. As such, when the equipment or contract is selected, payment is effected in the same manner as that outlined in the fiscal policy and procedures manual. Additionally, for those service contracts with a labor component of \$2,000 and above the operations of the contractor is reviewed by ACS for compliance with the Davis Bacon Act.²

² More information on this Act is presented in Appendix 1.

3.4 Goods and services over \$50,000 including construction and maintenance contracts.

Bushwick United Head Start does not have any individual authority to procure goods and services in excess of \$50,000. All purchases above this limit **MUST** be done with the written approval of the grantee. In the case of construction related projects, the procurement of contractors and any construction service-related work is done through the procedures set up by the grantee.

Based on collaborative efforts with the grantee, it is the understanding that procurement procedures in this category follow the practice of sealed bidding. This is primarily used for renovation or construction projects. In this method, bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is usually the preferred method for procuring construction.

When sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

It is the responsibility of the Administration for Children's Services (ACS) facilities department to evaluate the bids and select the best candidate. Once this is done and the contract written, work commences. Usually, payment is also approved by ACS who, only after considering a delegate agency payment release authorization (DAPRA) may release funds to the Agency to effect payment to the contractor.

4. CONTRACT COST AND PRICING

Bushwick United Head Start, in collaboration with the grantee performs a cost or price analysis in connection with every procurement action including contract modifications that are engaged. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, independent estimates are made before receiving bids or proposals.

A cost analysis is usually performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis is usually necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

5. BONDING REQUIREMENTS

For construction or facility improvement contracts or subcontracts exceeding the acquisition threshold (more than \$50,000, or construction related) Bushwick United Head Start requires that the vendor be adequately bonded and insured to ensure that the agency's interest is adequately protected.

6. RECORDS AND AUDIT

Consistent with 45 CFR 74.45 and 45 CFR 92.36(i)(11), appropriate cost analyses are performed by Bushwick United Head Start and discussed with the DAPC, Sponsoring Board and grantee. Only when there is shared consensus does an acquisition over the \$5,000 benchmark proceed. There is written documentation regarding the reasonableness, allocability and allowability of the said cost. Further, all records are kept for a minimum of three years following the finalization of works and are available for audit.

APPENDIX 1

Davis-Bacon Guidance (Adapted from ACF log No. acyf-im-hs-04)

When the Head Start Act was amended to allow the use of grant funds to construct or make major renovations to Head Start facilities, the law was also changed to make the Davis-Bacon Act apply to contracts for construction or renovation of Head Start facilities. The effective date of this part of the law was October 1, 1994.

Section 644(g) (3) of the Act now states:

“All laborers and mechanics employed by contractors or subcontractors in the construction or renovation of facilities to be used to carry out Head Start programs shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the ... [Davis-Bacon Act].”

The purpose of this guidance is to highlight some of the basic requirements of the Davis-Bacon Act. Because the law and Department of Labor (DOL) regulations place the responsibility for enforcement of the Davis-Bacon Act on the granting agency (such as the Administration for Children and Families (ACF)), and not on the DOL, this memo will provide detailed information on the requirements. However, this guidance is not a complete discussion of all aspects, sometimes quite complex and arcane, of Davis-Bacon and other related laws. It is intended to provide an introduction to the subject and enable Regional Office staff to respond to most questions that grantees will have on the subject, and to inform you of our basic enforcement responsibilities.

In Part 1 of this guidance the general features and definitions of the Davis-Bacon Act are described. Part 2 discusses our role in monitoring compliance with it.

1. What is the Davis-Bacon Act?

The Davis-Bacon Act is a federal law which requires that "prevailing wages" and fringe benefits must be paid to all laborers and mechanics employed under direct federal contracts and certain other (usually federally financed) construction and renovation projects. The law requires that the advertised specifications for every (covered) contract in excess of \$2,000... shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there...

Davis-Bacon requires that all covered employees be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amount accrued at the time of the payment, computed at rates not less than those in the advertised specifications, regardless of any contractual obligation which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics.

The Act imposes record keeping and filing requirements on the contractor, the delegate agency, grantee, and the Federal agency which funds the grantee. When the Davis-Bacon Act applies, contracts of construction or renovation must include certain clauses governing minimum wages to be paid to laborers and mechanics (including the basic hourly rate of pay and the amount contributed by the contractor or subcontractor for certain fringe benefits), limitations on wage withholding, payroll and basic records which must be kept, compliance with anti-kickback provisions, subcontracts, termination of the contract for breach of Davis-Bacon requirements, and other related matters.

2. Does Davis-Bacon apply to contracts to which the grantee, but not the Federal government, is a party?

Yes. The Davis-Bacon Act prevailing wage requirements were made applicable to Head Start grantees by section 644(g)(3) of the Head Start Act.

3. Does the construction or renovation of a facility which will be used to house a Head Start program fall under the Davis Bacon requirements even if no federal funds are used in the construction or renovation?

Yes. The Head Start Act makes Davis-Bacon applicable to "the construction or renovation of facilities to be used to carry out Head Start programs" and does not make federal funding a condition of Davis-Bacon applicability. The DOL has interpreted this to mean that Davis-Bacon applies to all construction or renovation of Head Start facilities, whether or not grant funds are used to finance the construction or renovation. Davis-Bacon applies to buildings not owned by the grantee if the facility is used or will be used to carry out Head Start programs. So, if a building which a grantee rents is to be used to carry out a Head Start program, any renovation of the building which costs more than \$2,000 falls within the requirements of the Davis-Bacon Act, even if no federal funds are used to pay for the construction or renovation.

4. What is meant by "construction or renovation?"

The Labor Department regulations define the terms very broadly to include all types of work done on a particular building or work at the building site. Included within the meaning of the phrase "construction, prosecution, completion or repair" (the phrase in the DOL regulation): altering, remodeling and installation at the work site of items fabricated off the site (where such installation is necessary to the construction or renovation); painting and decorating; manufacturing or furnishing of materials or equipment on the site of the building or work; and transportation between the actual construction location and a facility which is dedicated

to such construction and deemed a part of the work. The "site of the work" does not include the permanent home offices of the contractor or subcontractor.

5. What does "laborers and mechanics" mean?

According to DOL regulations, the term "includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial ...The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual."

6. Does Davis-Bacon apply to state and local government grantees?

The regulation provides that a State or local government is not regarded as a contractor in situations where construction is performed by its own employees. If a State or local government grantee contracts for renovation or construction of a facility to be used to carry out a Head Start program, that contract (if in excess of \$2,000) would be covered.

7. What are the record-keeping and reporting requirements of the Act?

Contractors and subcontractors subject to Davis-Bacon must furnish each week a statement on the wages paid each of its employees engaged in work covered by the Act during the preceding weekly payroll period. The DOL has a form for this purpose, a copy of which is attached as Attachment 2. This statement must be delivered or mailed within seven days of the payroll period to the grantee, which must submit them to the ACF. Contractors and subcontractors are required to preserve their payroll records for a period of three years from the date of completion of the contract. The regulation specifies what information must be included in payroll records.

8. What are ACF's responsibilities with respect to monitoring compliance with the Davis-Bacon Act?

When a facility to be used to carry out a Head Start program is constructed or renovated the Regional Office which administers the grant will have several responsibilities. These responsibilities are summarized below, according to the time at which the responsibility must be carried out.

- a. **Before the work begins** Before the construction or renovation begins the Regional Office must make sure that the appropriate wage determination or determinations are incorporated in-bid solicitations and contract specifications, and for designating specifically the work to which such wage determinations will apply. Wage determinations are published annually in the Federal Register, and are updated as needed. It is our responsibility to assure that the wage determination included in the bid solicitation is up-to-date, and that modifications of wage determinations are included up to the time of the contract award (or other applicable wage determination lock-in date).

- b. **Enforcement** ACF must make sure that the labor standards clauses (included as Attachment 1) have been inserted in the contracts subject to the Davis-Bacon Act. No grant funds for renovation or construction may be approved unless the Regional office is assured that the contract clauses and the correct wage determination are contained in the contract. In addition, grant funds for renovation or construction must be suspended unless the contractor is complying with the requirements of Davis-Bacon and has filed with ACF a current certification of its compliance. Payroll and certification of compliance forms submitted to ACF must be preserved for a period of 3 years from the date of completion of the contract and must be produced at the request of the Department of Labor at any time during the three-year period.

- c. **Investigations** DOL regulations state that granting agencies are responsible to make "such investigations...as may be necessary to assure compliance with the labor

standards clauses.... Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance." The DOL specifies that such investigations "shall include interviews with employees, which shall be taken in confidence and examinations of payroll data" as well as registration and certification of apprenticeship and training plans.

- d. **Regular reports to the Department of Labor** ACF is obligated to make semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. The reports must be furnished to the DOL by April 30 and October 31 of each year.