

Equitable Community Investment for the Win: How Changes to Homeless Services Procurement Could Shift Local Economies

*Erica McWhorter**

Abstract.....	40
I. Introduction.....	40
a. Overview of Homeless Services and Community Systems of Care	40
b. Homeless Services Procurement and Opportunities for Inequities.....	41
c. What Inequity Looks Like Beyond Program Outcomes	43
d. Why Local Business Operated by Disadvantaged and BIPOC Persons Is Important	45
II. Recent Government, Local, and Industry Responses	47
a. Race and Outcomes Focus.....	47
b. Biden-Harris Executive Orders Lead to Agency Equity Action Plans.....	47
III. What Does Systems Change Through Procurement Mean?	49
a. Freeing the System from Reliance on Standard Operating Procedures	49
b. Beneficial Impact on Individuals, Systems, and Communities	50
IV. Call to Action	50
a. Federal Government Entities	50
i. HUD	50
ii. USICH.....	51
b. State and Local Governments.....	52
c. CoCs.....	52
d. Philanthropic Partners	53
e. A Few Cautionary Notes	54
i. Equitable Funding Opportunities, Not Perceived Incapacities	54

*Erica McWhorter, Principal Excelebrate PB LLC. Erica is the thought partner who will help you identify prime opportunities, create the ideal plan to get it done, and find the optimal resources to make it happen. At Excelebrate, she works with social impact organizations and governments to develop and sustain internal and systemwide capacity to reach their goals and stay on mission. She is committed to a thoughtful partnership that will combine the power of collaboration and values-based decision making to deliver the change and impact clients seek.

ii. System Coordination Requirements Without Remuneration or Resources	54
iii. Subcontracting Should Lead to Direct Contracting	54
V. Questions for Further Study	54
VI. Conclusion.....	56

Abstract

In homeless service systems and local communities, it is important to look to upstream activity, such as procurement, to identify and address ongoing inequities downstream. Current regulatory structure, policy frameworks, and procurement practices encourage equitable and innovative approaches to procurement efforts, specifically homeless service resource allocations. This article will identify intervention opportunities that can reduce homeless service monopolies, outdated procurement practices, and unintended disparate impacts. Interventions would benefit the systems, their participants and stakeholders, local community economies, and under-resourced and under-represented community members, such as nonprofit homeless service providers identifying as Black, Indigenous, and People of Color. Finally, this article raises a call to action for opportunities for intervention, compliance with Title VI of the Civil Rights Act, and research questions for further study.

I. Introduction

a. Overview of Homeless Services and Community Systems of Care

Homeless services are undoubtedly a necessary part of a successful response to housing unaffordability, systemic and structural inequities, economic crises, inadequate social network capital, and for communities unable to economically sustain their members. In fact, viewing homeless services through those lenses, it becomes clear that homeless services also function as community investments and development supports. This community investment matches the U.S. Department of Housing and Urban Development’s (HUD’s) stated purpose for the Continuum of Care (CoC) Program.

This is equally true locally where these systems are often referred to as “systems of care.” Recently, this has led to increased awareness of the systemic and structural inequities that have caused and perpetuate homelessness and even how homelessness amelioration to date has contributed to new and growing inequities. While local homeless systems and the CoC Program have grappled with this reality—especially in the wake of recent national visibility of social inequity—there are still systemic and structural opportunities for HUD and local homeless service systems to reduce disparities and improve equity, specifically for procurement.

After the passage of the McKinney-Vento Homeless Assistance Act in 1987,¹ HUD began coordinating the provision of homeless services,

1. McKinney-Vento Homeless Assistance Act, Pub. L. No. 100-77, 101 Stat. 482 (1987) (codified at 42 U.S.C. § 11301 *et seq.*).

including housing, using the Continuum of Care (CoC) Program.² Later in 2009, Congress passed the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009,³ which formalized the CoC process.⁴ According to HUD, “The Continuum of Care (CoC) Program is designed to promote a community-wide commitment to the goal of ending homelessness.”⁵ The program provides funding to nonprofit providers, states, Indian Tribes or tribally designated housing entities and local governments to quickly rehouse persons experiencing homelessness.⁶

Between 2012 and 2022, homeless services under the CoC program and as an industry grew significantly in response to increasing crises, technological and service innovation, and the visibility of homelessness. By 2022 funding awarded through the CoC Program’s Annual Notice of Funding Opportunity (NOFO) totaled \$2.76 billion—a sixty-five percent increase from 2012.⁷ In 2023, HUD issued a NOFO that awarded \$3.2 billion in funding to homeless service projects—about a sixteen percent increase year over year.⁸ That NOFO, which is the primary but not only HUD funding stream for the CoC Program, awards the vast majority of homeless assistance funding for local communities to use and distribute to nonprofit service providers.⁹

b. Homeless Services Procurement and Opportunities for Inequities

Procurement for HUD-funded programs, including grants awarded under the CoC NOFO, is guided by several statutes, including federal

2. U.S. DEP’T OF HOUS. & URB. DEV. (HUD), CONTINUUM OF CARE PROGRAM (2024), https://www.hud.gov/program_offices/comm_planning/coc [hereinafter CoC PROGRAM].

3. Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009, 42 U.S.C. § 11302 (2018).

4. 24 C.F.R. pt. 578 (2018).

5. *Id.*

6. CoC PROGRAM, *supra* note 2.

7. HUD, FY 2022 CONTINUUM OF CARE NOTICE AND FUNDING REPORT (Mar. 2, 2024), https://www.hud.gov/program_offices/comm_planning/coc/fy_2022_coc_competition.

8. HUD Press Release, Biden-Harris Administration Awards \$3.16 Billion in Homelessness Assistance Funding to Communities Nationwide (Jan. 29, 2024), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_24_018. Local communities received necessary increases during the COVID-19 pandemic. However, such increases were needed prior to the pandemic.

9. HUD also funds many other national housing and homeless service programs under separate funding allocations, which are often braided or leveraged to add resources to the local stock of affordable housing and services that can be used for homelessness assistance. Programs include Emergency Solutions Grants (ESG); Community Development Block Grants (CDBG); Public Housing Programs (Housing Choice and Project Based Vouchers); Section 8 Project-Based Rental Assistance; various ad hoc demonstration project NOFOs, and others. *See also* HUD, PROGRAMS OF HUD, <https://www.hud.gov/hudprograms> (last visited June 4, 2024).

procurement standards¹⁰ and the CoC Program Interim Rule.¹¹ The Interim Rule provides program specific details about funding disbursement, responsibilities of the local Continuum of Care, methods that the CoC applicant must follow to prepare an application for funding, the application and grant award process, project types and requirements, and program and grant administration requirements. It also identifies eligible entities, including nonprofits, states, local governments, and tribes. For-profit entities are ineligible.

For the CoC NOFO, which is the largest and primary source of federal (and often local) homeless services funding, each CoC is required to design, operate, and follow a collaborative process for developing project funding applications.¹² The CoC is also required to establish priorities for funding local projects.¹³ Finally, the CoC must establish whether it will submit a single application for funding inclusive of the prioritized community projects or whether it will collect and combine all community applications for funding.¹⁴ The CoC is eligible annually for a pro rata need amount based on project budgets and the CoC's annual renewal demand (dollar amount for projects eligible for renewed grant funding).¹⁵ Based on this provision, the CoC must develop a competitive process to identify the projects that the CoC will submit to HUD for its annual funding.

Funding procurement regulations mark an early opportunity in the process for inequities to develop. While statutory authority is designed to be explicit, it is not designed to necessarily be *specific*. For instance, in the case of CoCs, the Interim Rule, which provides implementation requirements for the CoC program established by the HEARTH Act, gives HUD the power to establish the funding process as it sees fit, and the CoC may designate any entities it sees fit to submit applications. Further, the Interim Rule outlines requirements such as community engagement but does not specify methods or scope, such as the number or qualifications of persons to sit on the CoC's board. Although HUD will publish the annual Notice of Funding Opportunity (NOFO) with requirements and even HUD policy—recently including language encouraging or requiring documentation of racial equity¹⁶—each community is ultimately responsible for ensuring an equitable nondiscriminatory process specific to their jurisdictional needs. Without policy providing guidance or direction, ongoing freely and eas-

10. 2 C.F.R. pt. 200, subpt. D (2018).

11. 24 C.F.R. pt. 578 (2018); *see* 42 U.S.C. § 11382 (2018).

12. 24 C.F.R. § 578.9 (2018).

13. *Id.*

14. *Id.*

15. *Id.* § 578.17.

16. *See generally* HUD, CONTINUUM OF CARE PROGRAM COMPETITION AWARDS (Mar. 25, 2024), https://www.hud.gov/program_offices/comm_planning/coc/awards (listing prior year NOFOs with application questions, instructions, and references to the advancement and demonstration of equity in local CoC processes).

ily accessible technical assistance, monitoring and enforcement of equitable standards, or study of the outcomes of CoC competitions, CoCs are left using their best judgment, existing resource capacity, and self-identified priorities. To date, this silence has not worked to regularly produce equitable processes or equitable access and service provider representation for local community members.

The next point where inequity may develop is in the CoC's development and implementation of the competitive process. Due to numerous factors, including expertise and capacity, CoCs may rely on external technical assistance providers to develop and improve these competitive processes for them, with the mistaken belief that these entities are all aware of the risks of procurement inequities or know how to mitigate or engineer competitive processes that are equitable in the first place. Additionally, the process design, if not reviewed often and without guidance on equity and nondiscrimination, may contribute to inequities across various decision points, such as transparency, notice, local eligibility criteria, scoring, review panels, compliance, project evaluation, and appeals.

Finally, community priorities for funding are another key opportunity to address inequities before and during the competitive process. Guidance and support about what this means and how it translates into competition process or decision points, projects, and applicants are crucial to building equitable processes that are holistic and effective. Further, inequities can arise due to a lack of clarity about establishing and using local priorities, such as when priorities should be established and how to align a process with existing priorities or enable fair notice and participation when a competitive process introduces new priorities or compliance rules.

The majority of regulatory guidance and policy support are focused on downstream effects where inequities appear after programs are already funded and implemented. A holistic review of homeless systems and institutions makes clear that there are multiple upstream opportunities within procurement to identify and address where those and other inequities may begin.

c. What Inequity Looks Like Beyond Program Outcomes

Understanding equity is the best way to identify and address inequity. According to PolicyLink, equity is the “just and fair inclusion into a society in which all can participate, prosper, and reach their full potential. Unlocking the promise of the nation by unleashing the promise in us all.”¹⁷

Systems and procurement policies that deny fair inclusion, limit participation, and enable only a few to prosper or innovate within those systems effectively restrain individuals and communities from benefiting from and contributing to the work that is intended to support them and those with their shared lived experience.

17. POLICYLINK, THE EQUITY MANIFESTO (2024), <https://www.policylink.org/about-us/equity-manifesto>.

In CoC Programs and housing services inequity appears in systems and procurement policies, communities, and their economies, and at the individual level for community members. Tremendous documentation, study, and visible evidence, including from HUD,¹⁸ demonstrates inequity and its impacts on persons being served by homeless service systems and institutional structures like the CoC Program.¹⁹

However, less often discussed is the direct impact of those structural and systemic inequities born of the ameliorative efforts on the community members and communities where homelessness and homeless services exist. These community members include the persons and nonprofit businesses and leaders who are under resourced, underrepresented, and frequently identify as Black, Indigenous, and other People of Color (BIPOC). Of that group, those most directly impacted by the systemic and structural inequities of procurement policies are the homeless service providers that share lived cultural, economic, and other experiences with those experiencing homelessness in their community. They are largely excluded from the billion dollar industry that presumes to be available to “solve homelessness” for their communities and people who look like them.

The scope of the economic impact of the CoC (federal, state, and local) system procurement inequity is massive. The inequitable systems, policies, and approaches silo resources that are intended to be used locally in the coffers of large and segregated entities, often creating local service provider monopolies that are rarely inclusive of BIPOC organizations.²⁰ This inequity has the added effect of reducing the resources and power available to community members closest to the problems from implementing solutions driven by that shared lived experience. It also reduces access and choice by persons seeking services to find those most applicable to their needs and experiences. This is how structural and systemic inequity is born and perpetuated: artificial reductions or redirections of access, power, choice, and resources.

The result is that the system designed to empower communities and fund homeless solutions is evolving rapidly into a system that capitalizes on and perpetuates existing inequities: restricting access to resources and power for those with preexisting resources by using inequitable

18. See HUD, RACIAL EQUITY (2024), <https://www.hudexchange.info/homelessness-assistance/racial-equity/#coordinated-entry-equity-initiative>.

19. See Jeffrey Olivet, Catriona Wilkey & Regina Cannon, *Racial Inequity and Homelessness: Findings from the SPARC Study*, 693 ANNALS AM. ACAD. POL. & SOC. SCI. 82 (2021); Matthew Z. Fowle, “Racialized homelessness: A review of historical and contemporary causes of racial disparities in homelessness,” 32 HOUS. POL’Y DEBATE 940 (2022); Jennifer E. Mosley, *Cross-Sector Collaboration to Improve Homeless Services: Addressing Capacity, Innovation, and Equity Challenges*, 693 ANNALS AM. ACAD. POL. & SOC. SCI. 246 (2021).

20. See CoC PROGRAM, *supra* note 2. All data regarding the organizations funded in each CoC by the HUD CoC Program year over year is publicly available online. The agency names and funding amounts are listed, making further research into this hypothesis possible.

determinations of readiness, capacity, and value in procurement policy and practice. This is not just an issue of unfairness or a need for inclusion, study, or training. This issue illustrates that disparities within local homeless systems and the CoC Program structure are not limited only to program outcomes or what can be measured by system data. Therefore, disparities should not be defined solely in those terms or with responses limited by those operational factors.

The disparities are indicative of discriminatory procurement practices that affect both system participants and, critically, *non*participants too. These disparate impacts are a potential Title VI²¹ trigger and need just as much attention as inequities in downstream homeless services and outcomes.²²

*d. Why Local Business Operated by Disadvantaged
and BIPOC Persons Is Important*

Minority-owned small businesses contributed almost \$193 billion in economic output per year according to 2019 Census data—exceeding the annual GDP of eighteen U.S. states.²³ As of 2017 there were more than 1 million businesses led by people of color (“minority businesses”), generating over \$1.4 trillion and employing 8.9 million people.²⁴ In 2021 the U.S. Department of Commerce Minority Business Development Agency issued a report on the Contribution of Minority Business to the U.S. Economy and found the contribution of those entities to U.S. GDP is projected to increase three-fold by 2060, reaching 7.4%.²⁵ Local Initiatives Support Corporation (LISC) makes the case that procurement can be leveraged for economic equity, including increasing business and job opportunities and improving the quality and competitiveness of projects and contracts.²⁶ While these contributions are specific to for-profit enterprises, the scope and impact of BIPOC business leadership on local communities and the ability to provide economic stability and progress are illuminating.

21. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*

22. 42 U.S.C. § 2000.

23. Press Release, Cal. Office Small Bus. Advoc, California’s Minority-Owned Small Businesses Contribute \$192.8 Billion in Economic Output and Support Over 2.5 Million Jobs Annually, New Report Shows (Oct. 10, 2023), <https://calosba.ca.gov/californias-minority-owned-small-businesses-contribute-192-8-billion-in-economic-output-and-support-over-2-5-million-jobs-annually-new-report-shows/#:~:text=Minority%20small%20businesses%20contribute%20nearly,million%20jobs%20annually%20across%20California.>

24. U.S. DEP’T OF COMMERCE, MINORITY BUS. DEV. AGENCY, THE CONTRIBUTION OF MINORITY BUSINESS ENTERPRISES TO THE US ECONOMY (Sept. 2021), <https://www.mbda.gov/contribution-minority-business-enterprises-us-economy>.

25. *Id.*

26. LOCAL INITIATIVES SUPPORT CORP., LEVERAGING PROCUREMENT FOR ECONOMIC EQUITY (2024), <https://www.lisc.org/our-resources/resource/leveraging-procurement-economic-equity>.

HUD's 2023 Equity Action Plan emphasizes the importance of using "small, local businesses and creating opportunities for sustainable entrepreneurship to build and retain individual and community wealth."²⁷ The Plan also states that "HUD is in a unique position in which it can encourage its grantees to work with local small businesses by sharing effective models from programs as varied as Choice Neighborhoods and Community Development Block Grants (CDBG) Disaster Recovery."²⁸ This statement is applicable to nonprofit service providers in local homeless systems. After all, through the CoC Program, NOFO alone designates more than \$3 billion per year specifically for not-for-profit, government, and tribal use and procurement.

In recent years, as the homeless services industry has moved towards more equitable approaches, one of the rallying cries and policy shifts has been "nothing for us without us."²⁹ This statement specifically addresses the need to include persons with lived experience in planning and decision-making processes. That "us" must be inclusive of the communities in which homelessness is an issue and the full range of local service providers with similar shared experiences of the system's participants, including affordable housing developers and landlords. This is especially so if resolving homelessness and system inequities is truly a community-wide commitment.

Furthermore, homeless systems must begin using proximate leaders who are adept at creating asset-based assessments and solutions for community members. Thus, the leaders who are proximate to the communities and issues that they serve "have the experience, relationships, data, and knowledge that are essential for developing solutions with measurable and sustained impact . . . [and] ability to recognize and leverage assets within communities that are often overlooked or misunderstood when viewed through a dominant culture lens."³⁰ Systems should use leaders from communities who can define human potential beyond deficits or traumas and observe more nuance and root causes of issues.

In this context, homeless service providers need the ability to recognize the expertise and assets of those being served. The professionals who design and run social sector programs should be leading systems change and programing, not merely providing input or feedback, or helping to document the race of the persons served. Identifying and selecting providers cannot be based only on familiarity or safe bets using methods, strategies, and certifications that are industry standards. Enhanced systemic

27. HUD, HUD's EQUITY ACTION PLAN (2023), <https://www.hud.gov/equity>.

28. *Id.*

29. See Donald Whitehead, "Housing Not Handcuffs" Rally, NAT'L COAL. FOR THE HOMELESS (2023), <https://nationalhomeless.org/author/kenia>.

30. Angela Jackson, John Kania & Tuaine Montgomery, *Effective Change Requires Proximate Leadership*, STAN. SOC. INNOVATION REV. (2020), https://ssir.org/articles/entry/effective_change_requires_proximate_leaders#.

interventions that leverage untapped expertise and innovation require a nonstandard, diversified approach.

II. Recent Government, Local, and Industry Responses

a. Race and Outcomes Focus

To date the regulatory, local, and industry responses to inequities in homeless services have been largely focused on the most visible inequities, such as racial representation within the system (e.g., identifying and comparing the number and rate of persons of color and disabled accessing the CoC's resources, permanent housing placements, etc.). This starting point has many benefits, whether due to knowledge, capacity, or strategy. Those benefits include addressing the immediate experience of system participants and actors, shifting assumptions and beliefs, and producing data that will help investigate sources of inequities and interrogate ongoing responses.

These priorities, when combined with intentional ongoing action and attention, creates significant downstream impacts. However, to change structural and systemic inequities, the response must also include upstream action—rebuilding foundations and frameworks that we have relied on for generations as the “right way” for the government and community to coordinate, collaborate, allocate resources, and make decisions.

To date the regulatory, local, and homeless industry responses to inequities have been heavily race-focused or race-based with an early emphasis on Diversity, Equity, and Inclusion (DEI) training and analysis. Data analyses, changes, and requirements, while relevant, have also garnered significant attention and resources. These are often outcomes driven with a specific focus on funded programs and system outcomes. Another valid approach has been to make space for new voices and provide “seats at the table.” This approach represents a broad array of efforts inclusive of diverse advisory and governance boards, separate and integrated lived experience advisory and leadership groups, and broader efforts at engagement and feedback at the community level, within programs, and as part of system governance and operations. For example, during the COVID-19 pandemic, HUD published a wide array of racial equity resources inclusive of many of these ideas as options to identify disparities and address overrepresentation largely aimed at downstream activities and decision making.³¹

b. Biden-Harris Executive Orders Lead to Agency Equity Action Plans

More recently, the Biden-Harris Administration issued two Executive Orders specific to advancing and furthering racial equity and support for underserved communities through the federal government with focuses on agency activities and procurement. The first Executive Order issued on January 20, 2021, directed federal agencies to assess how their policies and

31. HUD EXCH., RACIAL EQUITY (2024), <https://www.hudexchange.info/homelessness-assistance/racial-equity/#covid-19>.

programs perpetuate barriers for underserved communities and to develop strategies for removing those barriers.³² The second Executive Order issued February 16, 2023, intended to further the prior order, called for “a multi-generational commitment” and puts the responsibilities on agencies across the federal government to advance a “whole-of-government approach to racial equity and support for underserved communities,” with an explicit emphasis on procurement.³³

The first Executive Order resulted in federal agencies developing agency equity action plans and assessments. HUD’s 2023 Equity Action Plan (Plan) specifically identified access to federal contracting as opportunities that support economic growth and wealth building for underserved communities.³⁴ While that reference was distinct from HUD’s homelessness strategy, it is still relevant for procurement within the HUD-funded CoC Program. Also relevant is what the Plan identified as an early accomplishment: developing a partnership framework with philanthropic support to help local communities increase equity in deployment of federal funding,³⁵ which is another explicit reference to CoC Program local procurement processes. While the plan purports to focus on “widening the base of small and disadvantaged business” through means such as outreach and tracking successes,³⁶ it does not go so far as to be inclusive of strategies to direct Title VI-compliant decision-making or ensure the inclusion of not-for-profit BIPOC service providers as grantees.

Similarly, the U.S. Interagency Council on Homelessness (USICH), an interagency partnership formed to prevent and end homelessness using a multi-year interagency roadmap and providing state and private sector support, also developed an Equity Action Plan. As part of the agency’s 2022 Federal Strategic Plan, USICH highlighted an “upstream” approach focused on racial equity that requires “an all hands-on-deck response” around multiple pillars: equity, data, and collaboration, housing and supports, and homelessness response and prevention.³⁷ The Equity Action Plan is intended to be a mechanism to center racial equity and evidenced-based work done as part of the federal strategic plan. It focuses on addressing the overrepresentation of BIPOC persons in homeless systems, providing support to Indian tribes, and embedding racial equity into USICH internal

32. Exec. Order 13985 (Jan. 20, 2021).

33. Exec. Order 14091 (Feb. 16, 2023); *see also* Letter from Jason S. Miller, Deputy Dir. for Mgmt., Exec. Office of the President, Memorandum for the Heads of Executive Departments and Agencies: Advancing Equity in Federal Procurement (Dec. 2, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-03.pdf>.

34. HUD’s EQUITY ACTION PLAN, *supra* note 27.

35. *Id.*

36. *Id.*

37. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, WHAT IS THE FEDERAL STRATEGIC PLAN 10 (Dec. 2022), <https://www.usich.gov/federal-strategic-plan/overview>.

operations and decision-making processes.³⁸ Again, it has noteworthy and potentially useful responses, but it is missing critical upstream practices.

Integral to both upstream and downstream action is holistic action addressing inequities or disparities that occur internal and external to systems and institutions. The system participants and its actors cannot be the only focus, especially if the program mandate is to promote a “community-wide commitment,” which encompasses community members currently without equitable access to HUD-funded opportunities.³⁹ The Equity Action Plans move closer to this holistic approach, but specific direct action—related to procurement and the communities in which persons will or have resided—is necessary to make lasting, meaningful individual, system, and community progress.

III. What Does Systems Change Through Procurement Mean?

In 2021 the White House produced an issue brief on the benefits of increased equity in federal contracting focused on small disadvantaged for-profit business and based on recent federal policy and procurement practices.⁴⁰ Changing the system through procurement also means diversifying the pool of vendors and improving service delivery, building wealth and social capital,⁴¹ and understanding disparities. A community’s willingness to embark on these procurement changes is a direct reflection of their willingness to share power and resources beyond their existing partners and with the communities that they intend to serve.

a. Freeing the System from Reliance on Standard Operating Procedures

Continued conversation and informational brochures cannot change inequitable processes. Investment and accountability to change operating procedures are necessary. This is the opportunity to create new standard operating procedures. An ideal starting place is acknowledging that nonprofits are businesses that should benefit from federal and local approaches to equitable procurement and service investments similar to what for-profit enterprises enjoy. It has long been theorized that government agencies and nonprofits have a critical relationship in the form of a longstanding partnership (or interdependence) in human services where they have agreed to share responsibilities to meet the unsatisfied demand for collective goods, such as homeless services delivery.

38. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOW USICH PLANS TO ADVANCE EQUITY (Apr. 14, 2022), <https://www.usich.gov/equity>.

39. CoC PROGRAM, *supra* note 2.

40. US White House, Issue Brief: The Benefits of Increased Equity in Federal Contracting (Dec. 1, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/12/01/the-benefits-of-increased-equity-in-federal-contracting>.

41. NAT’L LEAGUE OF CITIES, BUILDING WEALTH THROUGH EQUITABLE MUNICIPAL PROCUREMENT (2021), https://www.nlc.org/wp-content/uploads/2021/11/YEF-Equitable-Economic-Mobility-InitiativesProcurement_Brief_FNL-Procurement-4.pdf.

That shared responsibility spans multiple decision points, all of which require shared investment, action, and accountability for equitable procurement. Some key CoC Program decision points include monitoring and reporting, local competitive process and contracting, identifying local and HUD priorities, providing training guidance and technical assistance, and researching opportunities for future funding. Within the local competitive process are additional key decision points where most disparities in procurement are triggered, such as transparency, local eligibility criteria, scoring, review panels, project evaluations, and appeals. We must specifically address how these activities operate in contravention to equitable policies and current regulations against unfairness and disparate impacts.

b. Beneficial Impact on Individuals, Systems, and Communities

In the context of CoCs and homeless services, the benefits are communal, systemic, and individual. First, these investments will create access, opportunity, and power (for choice, self-determination, and decision making) on multiple levels that will make a functional difference in the lives of those in the community and its homeless service participants. Second, procurement processes that reward hyperlocal activity and advocacy, lived experience leadership, multicultural local partnerships, and nontraditional programing, will ensure that community resources are dispersed more broadly and to relevant community members. Third, the system will be enhanced by a more diverse and responsive set of local resources and providers that can offer localized and relatable solutions and programing that otherwise would go unaddressed or under implemented due to lack of knowledge, familiarity, and seriousness given to ideas generated by those with lived and shared experience. Fourth, it will offer persons seeking services more opportunities to successfully address their needs within their community of choice and with community members understanding of their plight. Fifth, investments in local and BIPOC organizations are investments in local communities and all their community members.

IV. Call to Action

This is a prime opportunity to affect real systems change. The menu of options that follows offers refreshed and equitable procurement goals and opportunities for action for various homeless service system actors that directly address and purposely further existing federal and local equity efforts.

a. Federal Government Entities

i. HUD

HUD's procurement goals can be updated to mandate not only ongoing efforts to address racial and other inequities but also its Equity Action Plan. The goals should ensure that CoCs are compliant with Title VI. They should aim to address the following: (1) commit to creating equitable procurement and grant administration by updating HUD local competition

and grant administration standards and policies; (2) identify key decision points where inequities may develop in procurement and opportunities to support communities with Title VI compliance; and (3) encourage equitable procurement by supporting efforts to codify needed changes.

Opportunities to put these into action include:

- Updating local monitoring requirements to embrace the collection of agency demographic data and plans to address contracting disparities.
- Identifying specific considerations and approaches for equitable procurement to be used in local CoC NOFO and HUD-funded local competitive application processes.
- Establishing demonstration projects and specialized subcontracting opportunities for disadvantaged nonprofit leadership, with emphasis on providers with two or fewer direct CoC or government funded grants or contracts.
- Investing in education and technical assistance for CoCs and new service providers related to Title VI compliance, equitable procurement standards and competitive processes, HUD CoC Program opportunities, project requirements and development, and grant administration.
- Updating match,⁴² disbursement, and reimbursement requirements. Reducing up-front costs, which require providers to bring significant funds to the table to start the project, creating approval, start time, and contract fulfillment barriers.
- Investing in downstream research, asking and answering the questions below, and converting them into policy and funding guidance.
- Looking to sister agencies like the Department of Transportation for support in updating CoC Program procurement requirements.

ii. USICH

USICH can update its procurement-related priorities pursuant to its purpose, Federal Strategic Plan, and Equity Action Plan. It should continue researching inequities and interrogating the data and system responses. USICH should (1) advocate and support coordinated, holistic, and innovative approaches; and (2) connect federal agencies with existing successful equitable procurement processes with USICH agencies for procurement process and policy revision support.

Opportunities to put these priorities into action include:

- Updating the homeless research agenda, asking and answering some of the following questions.

42. *Id.* § 578.73 (2018).

- Coordinating investments in procurement education and demonstration projects.
- Establishing an equitable procurement working group to review studies, best practices, and recommendations about existing equitable procurement policies and strategies in place.⁴³
- Tasking working group with commissioning a study of current data (particularly on grantees and unawarded applicants), identification of metrics for future study, and developing a coordinated and collaborative revised procurement process, proposed regulatory language if necessary, and monitoring, reporting, and enforcement standards.

b. State and Local Governments

State and local government objectives for equitable procurement should (1) ensure that CoCs are compliant with Title VI for all federal funds disbursed through the state; (2) encourage equitable procurement by supporting efforts to codify needed changes; and (3) use lessons learned at state and local levels to improve procurement for homeless services.

Opportunities to put these into action include:

- Updating match, disbursement, and reimbursement requirements. Reducing up-front costs and delays in payments.
- Establishing working groups and demonstration projects directing funding at new and unfunded service providers.
- Providing full-cost funding or increased administrative funding and support to providers.
- Providing technical assistance for CoCs, local jurisdictions, and applicants to learn about procurement, funding opportunities, Title VI compliance, and project development.
- Reviewing procurement processes for ways to improve equity and ensure compliance with Title VI.

c. CoCs

CoCs and their lead agencies play the largest role. Their priorities should include (1) increasing the diversity of providers locally; (2) ensuring compliance with Title VI and all procurement regulations; and (3) building system capacity to provide breadth and depth of service necessary to meet the needs of all participants.

Opportunities to put these into action include:

43. DENISE FAIRCHILD & KALIMA ROSE, *INCLUSIVE PROCUREMENT AND CONTRACTING: BUILDING A FIELD OF POLICY AND PRACTICE* (2018), <https://www.policylink.org/resources-tools/inclusive-procurement-and-contracting>.

- Setting aside funding to support required match or unpredictable operational costs that may be needed for new projects by disadvantaged new providers.
- Updating match, disbursement, and reimbursement requirements.
- Reducing up-front costs and delays in payments.
- Identifying disadvantaged, and BIPOC agencies that could be partners or subcontractors.
- Supporting partner and project matching with experienced funded service providers.
- Prioritizing and seeking out applicants and projects with multiple partners, particularly those partnering with new and disadvantaged local entities.
- Reviewing the CoC application and other CoC procurement processes and identify opportunities to correct inequities.
- Learning about Title VI compliance to avoid disparate impacts, and monitoring and updating NOFO processes, contracts, and subcontracts.
- Seeking out neighboring jurisdictions and sister agencies that successfully updated their procurement or CoC NOFO process for guidance and lessons learned.
- Collaborating with the CoC Board and lived experience advisory bodies to identify new providers and local resources that could complement existing service provision, and getting additional perspective and feedback on service providers and the competitive process.
- Beginning procurement early and prioritize developing eligible and competitive applicants and projects by training new agencies to local processes and project needs.
- Revising the application process: streamlining and reducing unnecessary questions, using interviews to supplement information, asking about project impact on local community and inequity upstream.

d. Philanthropic Partners

Government funding is not sufficient to cover the full costs of addressing homelessness and its adjacent issues. Nor is it sufficient to ensure the full operational and administrative costs underpinning nonprofit homeless service projects. Philanthropic partners seeking to make holistic and equitable impacts in community development, BIPOC leadership, and disadvantaged organizations should consider full-cost grantmaking and investments in nonprofit leadership and operational capacity. These partners can support

reductions in systemic racial inequities and barriers to entry and ensure non-profit entity stability for project and mission success.

Opportunities to put these into action include:

- Providing operational funding to supplement government contracts and grants.
- Providing match funding for proposed projects as a show of early support and collaborative investment in the project, entity, and community.

e. A Few Cautionary Notes

i. Equitable Funding Opportunities, Not Perceived Incapacities

Approaches to address what is deemed to be the incapacity of some local as-yet unfunded disadvantaged agencies should not devolve into large-scale training treadmills with forced participation in local coordinated access processes. Equitable funding is the issue, not the perceived incapacity of entities that have not been funded before.

ii. System Coordination Requirements Without Remuneration or Resources
Requiring coordination, which includes resource-intensive placements, referrals, or expenditures for participants in the homeless system, without companion resources to ensure that coordination is viable (not harmful to the agency's operations), is much the same as asking people with lived experience to provide free training, direction, and assistance. Any nonprofits participating in the system, and providing the same or similar work as the currently funded agencies, should receive resources needed to participate because they are not otherwise benefiting from the revolving homeless system capital.

iii. Subcontracting Should Lead to Direct Contracting

While subcontracting is a good first step, efforts must be made to ensure that disadvantaged agencies are not permanently regulated to this status or overrepresented as subcontractors for extended periods. Systems must also be vigilant about the appropriate allocations of funding to subcontractors while monitoring the success of subcontracts. Subcontractor funding should not be punitive, *de minimis*, or otherwise reduced simply because the subcontractor is not the lead entity on the contract. That too could lead to discriminatory and disparate impacts.

V. Questions for Further Study

This issue presents many complexities. Those complexities are opportunities to research and explore questions that can lead us to renew our priorities for dismantling inequities in homeless services and improve community development outcomes for all, including disadvantaged and underrepresented local businesses like homeless services nonprofits.

As a starting point, improving homeless service procurement and administration can benefit by addressing some questions on metrics. First, what are the demographics of HUD's CoC program's direct grantees and subcontractors? How do BIPOC, underrepresented, and other disadvantaged service providers compare with white and white women-led service providers, in terms of the frequency and dollar value of awarded CoC Program funding year over year and to date? Is there enough data to make this assessment?

Second, how much funding has gone to repeat CoC Program service providers (excluding UFAs and CoC Lead agencies), including the following: (1) how many repeat service providers are funded year over year and to date?; (2) what is the average annual award amount?; (3) what is the total award amount to date?; (4) what types of projects go most often to repeat service providers?

As for the impact of inclusive and equitable procurement policies, questions include how do we sufficiently quantify the activities, performance, or impact of BIPOC and disadvantaged nonprofits generally? Second, how do repeat nonprofit service provider monopolies impact service provision? What is the rate and success of innovation and where are these new models and approaches originating? Later, when CoC Programs are demonstrating increased diversity and equity of service provision through procurement, questions should ask whether BIPOC and underrepresented leadership increase the rate and success of local housing services and placements for BIPOC and overrepresented participants.

Current procurement and CoC administration policies should also be explored for the questions they present, such as how are HUD and federally funded agencies ensuring local CoC Program compliance with Title VI in NOFO competitive processes and planning? How do other public service programs grant administration and procurement policies to ensure Title VI compliance, fair competition, and innovation from diverse and underrepresented groups? How can local, state, and federal government procurement policy adapt or better serve the full cost needs of new and disadvantaged CoC Program nonprofit service providers to ensure project success?

Finally, some process questions will aid the review and improvement of procurement practices. First, are there opportunities to develop certification or standardization for identifying BIPOC and other underrepresented or disadvantaged nonprofits similar to federal and state certifications of disabled, veteran, women, and minority-owned businesses? Second, what can we learn from new and underfunded BIPOC and underrepresented nonprofit organizations (during demonstration projects or as part of early intervention research) about improving grants-based procurement processes to increase access and innovation? Third, in a future state, it should be asked how effective have new or innovative models of equitable procurement been in the context of the CoC competitive NOFO process or for combatting downstream inequities.

While these questions are not exhaustive, they do indicate an untapped path toward equity. Investigating these upstream questions with the same vigor as the current review of program outcomes will provide far-ranging insight and opportunity for equitable system improvements, particularly downstream.

VI. Conclusion

This is an issue of public administration as much as it is an issue of homeless service provision, inequities, and disparate impacts. Doing nothing risks more than potentially harming a diverse set of providers; it risks permanently entrenching inequities into the processes by which programs are created, which directly impacts the quality, availability, feasibility, and utility of housing and services. It further risks disinvestment in the communities from which so many people experiencing homelessness originate and reside, destroying not only the opportunity for their safe and stable permanent return, but the ability of the community to be economically stable and avoid housing loss and displacement. Further research and explicit efforts to be inclusive and equitable upstream can provide communities, persons experiencing homelessness, and homeless service systems with real housing wins.