

2015 CDBG Grant Management Manual Workshop Procurement and Contracting

For Grantees and Grant Administrators



Department of Housing and Community
Development

Presenters:

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HOUSEKEEPING

- ✧ Today's Schedule – 9:00 a.m. - 4:30 p.m.
- ✧ Cell Phones – Vibrate Mode
- ✧ Rest Rooms
- ✧ Parking
- ✧ Questions are Good
- ✧ Handouts in Folder





INTRODUCTIONS

✧ WORKSHOP PRESENTER(S)

✧ CDBG STAFF

✧ AUDIENCE

- Your Name.
- Where you're from.
- What you do.
- How many years of CDBG experience.
- What you hope to learn from this workshop.



TODAY'S WORKSHOP

Reviewing Procurement & Contracting Chapter

- Overview of Procurement Training
- General Procurement Requirements
- Written Procurement and Selection Procedures
- Specific Procurement Requirements
- Professional Services Contracts
- Procurement of Construction Services
- Contract Requirements
- Change Orders
- Bonding and Insurance
- Section 3 Requirements



CDBG TRAINING OVERVIEW

This One Day Training ***Does Not***
Provide Details on Subrecipient and
Memorandum of Understanding (MOU)
Agreements



CDBG TRAINING OVERVIEW

- The use of federal funding requires compliance with Federal Regulations
- HCD has adopted a combination of 24 CFR Part 85.36 and 24 CFR 570.489(g) as the minimum procurement and contracting requirements for the State's CDBG non-entitlement program
- This Chapter adds additional requirements and limitations to the Federal Standards



Quiz Question

The primary purpose of the procurement process is for you to get the right consultant or company to do the work?

True

False



General Procurement Policies

- Primary purpose of the procurement process is to ensure **open and fair competition** when using outside contractors
- State grantees are responsible for ensuring CDBG funds are used in accordance with program requirements
- The use of contractors does not relieve the grantee of this responsibility



Quiz Question

Under 24 CFR 85.36, which are allowable procurement methods?

- a. Small Purchase Method
- b. Competitive Sealed Bids Method
- c. Competitive Request for Proposals (RFP) or Request for Qualifications (RFQ) Method
- d. Non-competitive (Sole Source) Method
- e. Subrecipient
- f. All of the above



General Procurement Policies

- Under 24 CFR 85.36, there are four procurement methods:
 - Small purchase;
 - Competitive sealed bids;
 - Competitive request for proposals/qualifications; and
 - Non-competitive method.



General Procurement Policies

- Every Grantee must maintain a complete procurement file showing all steps taken and the documents evidencing each step within the process.
- The Department reserves the right to review a Grantee's procurement file anywhere along the process.



General Procurement Requirements

Procurement procedures must follow the “Common Rule” 24 CFR Part 85.36:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured
- Clearly set forth all requirements that bidders must fulfill to be used in evaluating bids, proposals or qualifications
- Awards shall be made only to responsive and responsible contractors



General Procurement Requirements

- Determining factors to determine responsive and responsible:
 - Contractor integrity
 - Compliance with public policy
 - Record of past performance
 - Financial and technical resources



Quiz Question

Grantee's procurement file must contain the following documentation.

- a. Basis for cost or price (cost or price analysis)
- b. Set-up/Completion Reports
- c. Authority to Use Grant Funds (AUGF)
- d. None of the above
- e. All of the above



General Procurement Requirements

- **Records to maintain in procurement file:**
 - Information pertinent to the rationale for the method of procurement
 - Selection of contract type
 - Written RFP, RFQ, Sealed Bid, or Request for Quotes
 - Evidence of solicitation process
 - Submitted responses (bids)
 - Contractor selection or rejection
 - The basis for the cost or price
 - Sole Source Approval (in writing from the Department), if needed
 - Contract



Written Procurement and Selection Procedures

- Standards of Conduct
 - The topic of conflict of interest is discussed in detail at CFR 570.489 (g) (h)
 - Caution when existing contracted employees are performing CDBG work (more on this later)



Written Procurement and Selection Procedures

Conflict of Interest

**Black's Law Dictionary defines a
“conflict of interest” as:**

“A real or seeming incompatibility between a persons private interests and his or her public or fiduciary duties”



Written Procurement and Selection Procedures

Conflict of Interest (continued)

- **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

- If there is any doubt, the involved individual should recuse self and disclose conflict



Quiz Question

The City Clerk's primary responsibility is to get the right person to complete the project, even if that is her brother.

True

False



Written Procurement and Selection Procedures

Conflict of Interest (continued)

- **Examples:**

- Grant Administrator cannot help grantee with the procurement of grant administration if they intend to submit proposal
- Town Clerk cannot sit on bid committee if husband/brother is bidding on a construction contract



Written Procurement and Selection Procedures

Full and Open Competition

- Examples of restrictive of competition
 - Placing unreasonable requirements on firms
 - Non-competitive practices between firms
 - Organizational conflicts of interest
 - Requiring unnecessary experience and bonding requirement
 - Quid Pro Quo



Quiz Question

What efforts should a Grantee make to use qualified small, minority and women-owned businesses (MBE/WBE) when possible?

- a. Maintain a list of qualified small MBE/WBE businesses
- b. Ensure MBE/WBE businesses are included on solicitation lists
- c. Require prime contractors to take the same affirmative steps as the Grantee
- d. Where permitted, establish delivery schedules that will encourage participation
- e. All of the above



Written Procurement and Selection Procedures

- **Small, Minority and Woman-Owned businesses (MBE/WBE)**
 - Grantee must make following efforts to use qualified small, minority and women-owned firms when possible:
 - Maintain a list of qualified small MBE/WBE businesses.
 - Ensure MBE/WBE businesses are included on solicitation lists.



Written Procurement and Selection Procedures

- Assure MBE/WBE businesses are solicited whenever they are potential sources.
- Where permitted, establish delivery schedules that will encourage participation.
- Use the Small Business Administration (SBA) and Minority Business Development Agency Services.
- Require prime contractors to take same affirmative steps listed above.



Specific Procurement Requirements

Professional Services Procured Outside 24 CFR Part 85.36: “Contracted Employees”

- Previously contracted employees may be paid with CDBG GA funds
- Not eligible to submit a proposal for specific CDBG activity
- Conflict of interest



Specific Procurement Requirements

- **Cost Estimates**

- Every procurement action requires documentation that a cost or price analysis was completed.
- The method and degree of analysis is dependent upon the facts and type of procurement to be taken.
- Refer to *Price and Cost Analysis* resource document for additional information.



Specific Procurement Requirements

There are four types of procurement methods:

- ***Small Purchase Method***
- ***Competitive Sealed Bid Method***
- ***Competitive Proposal Method***
- ***Noncompetitive or Sole Source Provider Method***



Quiz Question

When using the Small Purchase Method, the lowest price must be accepted.

True

False



Specific Procurement Requirements

Small Purchase Method:

- Best suited to obtaining small quantities of supplies.
- Must be less than **\$150,000.**
- Competition is sought through written price quotations. **Lowest price must be accepted**
- No Sole Source Approval



Specific Procurement Requirements

Small Purchase Method – Expanded

- Single Planning and Technical Assistance (PTA) Study
- Single subject for a single project
- Single federal overlay for a single CDBG Project
 - Labor standards
 - NEPA
 - Relocation



Quiz Question

Which of the following types of contracts are NOT allowed under federal procurement?

- a. Fixed price (lump sum) contract
- b. Cost reimbursement contract
- c. Cost plus percentage-of-cost contract
- d. All of the above
- e. None of the above



Specific Procurement Requirements

Competitive Sealed Bid:

- Typically used in the procurement of construction contracts.
- Award is based on a fixed bid price.
- Awarded to firm that is most responsible bidder who is also the most responsive to the bid request.



Specific Procurement Requirements

Competitive Proposal Method:

- More than one source submitting a proposal
- Typically used in the selection of professional service providers
- Two types:
 - Request for Proposal (RFP)
 - Request for Qualifications (RFQ)



Specific Procurement Requirements

Competitive Proposals – RFP

- Must clearly and accurately state technical requirements for goods and services required.
- Grantee must publicize the RFP, and honor reasonable requests for an opportunity to compete.
- Proposals must be solicited from an adequate number of qualified sources.



Specific Procurement Requirements

Competitive Proposals – RFP (continued)

- Grantee must conduct a technical evaluation of the submitted proposals, based on the Scoring Criteria in the RFP.
- Grantee must award the contract to the most responsive and responsible bidder, which is the highest scorer.
- The successful bidder must clearly be the most advantageous source of the goods or services.



Quiz Question

Under federal CDBG regulations, price or cost is NOT an evaluation criterion for the procurement of professional architectural and/or engineering services where such services are to be paid in whole or in part with CDBG funds?

True

False



Specific Procurement Requirements

Competitive Proposals – RFQ

For procurement of architecture or engineering services the Request for Qualifications (RFQ) method must be used.

- Most qualified competitor is selected based on evaluation of qualifications.
- Price is not used as a selection factor.
- This approach may be used only to purchase architectural and engineering services.



Specific Procurement Requirements

Non-competitive/Sole-Source Provider Method:

- Grantee should consult CDBG staff before utilizing this method.
- This method may be used only under very limited circumstances and only with Department Written Approval.
- Must do a cost analysis verifying proposed cost data.



Specific Procurement Requirements

Non-competitive/Sole-Source Provider Method is allowable under these circumstances:

- When the item is available from only a single source;
- When a public exigency or emergency is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods; or
- When after solicitation of a number of sources (RFP/RFQ), competition is determined to be inadequate (one responsible proposal).



Professional Services Contracts

- If paid from CDBG funds:
 - Required to use the RFP/RFQ method of solicitation
 - Three-year period, maximum
 - Grantee's contracts should be reviewed and approved by the grantee's legal counsel
- If paid from local funds:
 - Select firm of choice adhering to state statutes



Professional Services Contracts

- **Professional Services Contracts should include:**
 - Specific contract period dates
 - Project milestones
 - Specification of materials and other services
 - Provisions for compensation
 - All required federal contract language



Procurement of Construction Services

- Prepare preliminary plans, specifications, and bid package
- Scope of work must be consistent with approved CDBG activity
- Construction bids must be publicly solicited using sealed bids
- Amendments or addenda must be sent to all bidders



Procurement of Construction Services

- Confirm Davis Bacon wage decision ten days prior to bid opening
- Conduct a public bid opening
- Review bids
- Address errors in bidding



Procurement of Construction Services

- Place complete documentation in procurement file – including;
 - CDBG Contract Transmittal Form (CTF)
 - CDBG Contract Special Provisions
- Award and execute contract and secure performance and payment bonds
- NEPA Choice Limiting action



Contract Requirements

- Provision for remedies
- Termination for cause and convenience
- Non-discrimination (Executive Order 11246)
- Reporting Requirements



Contract Requirements

- Copyrights and rights in data
- Access to records
- Records retention (minimum of 5 years after final payments)
- Compliance with Environmental statutes
- Energy efficiency



Contract Requirements

- For Construction Contracts
 - Copeland Anti-Kickback Act
 - Compliance with Contract Work Hours and Safety Standards Act
 - Davis-Bacon Act (contracts over \$2,000)



Change Orders

- Should be kept to a minimum
- For unforeseen problems or issues that arise during construction
- Should not be used to correct bidding errors
- General Contractor must obtain written approval from the Grantee



Quiz Question

Federal procurement regulations require three types of bonds be furnished by all contractors engaged in public works construction projects, they are:

- 1) _____
- 2) _____
- 3) _____



Bonding and Insurance

- Bid Bond/Guarantee
- Performance Bonds
- Payment Bonds



Quiz Question

The minimum amount for all bid guarantees for a CDBG projects is:

- a) 10% of the bid price
- b) 7.5% of the bid price
- c) 5% of the bid price
- d) None of the above



Bonding and Insurance

Bid Bonds:

- Used to assure bidder's good-faith intentions
- Must equal 5% of the bid price
- Submitted in a form that guarantees funds availability
- Checks are returned to unsuccessful bidders



Bonding and Insurance

Performance Bonds:

- Used to ensure completion of work
- Required on all construction projects greater than \$150,000
- Bond must be equal to 100% of the contract price



Bonding and Insurance

Payment Bonds

Used to ensure payment to subcontractors and suppliers

- Required on all construction projects greater than \$150,000
- Must equal 100% of the contract price
- Must guarantee payments to subcontractors and material suppliers



Section 3 Requirements

Section 3 of the HCD Act ensures that employment and other economic opportunities generated by certain HUD financial assistance be directed to low and very low income persons and business concerns

- Thresholds and Applicability
- Section 3 Procurement Standards
- General Compliance



Section 3 Requirements

Thresholds and Applicability

- Applies to training, employment, contracting and other economic opportunities when expending CDBG funds for public construction
- Also applies to contractors and subcontractors performing work on projects when the total amount exceeds \$200,000 and the contract or subcontract exceeds \$150,000
- Does not need to apply to purchase of supplies and materials



Section 3 Requirements

Thresholds and Applicability (continued)

- **Section 3 resident is:**
 - A public housing resident; or
 - An individual who resides in the jurisdiction (area) in which the assistance is expended and who is a low- or very low-income person.



Section 3 Requirements

Thresholds and Applicability (continued)

- **A Section 3 Business is:**
 - 51% or more of the business is owned by Section 3 residents; or
 - Whose permanent, full-time employees includes 30% Section 3 residents; or
 - That provides evidence of a commitment to subcontract 25% of the contract to Section 3 businesses.



Quiz Question

Section 3 allows for geographic preference as a scoring criteria?

True

False



Section 3 Requirements

Section 3 Procurement Standards

- Encourages a preference for Section 3 businesses.
- Section 3 requirements do not supersede 24 CFR 85.36
- Geographic preference is not allowed for scoring competitive bids, *except where applicable Federal statutes expressly mandate or encourage.*
- Section 3 consideration may be included as an evaluation factor where price is not sole factor.



Section 3 Requirements

Section 3 Procurement Standards (continued)

- Contractors/subcontractors are held to the same standards
- Include Section 3 information in all bid packages and contracts
- Grantees should discuss Section 3 requirements at pre-construction conferences
- Reporting requirements



Procurement and Contracting

**Please fill out the
Workshop Evaluation Form**





Procurement and Contracting

The End

