

2018 CDBG Procurement Workshop

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CDBG Procurement

Today's Goals:

- » **When and why procurement is required**
(Mgt Guide Chap. 2, with forms, 2 CFR language, etc. in Appendix 2)
- » **How to purchase goods and services in accordance with CDBG regulations**
- » **Summary of five methods**
- » **Summary of RFP and RFQ processes**

Procurement: Overview

- » **State and local recipients of CDBG funds are responsible for ensuring that goods and services are procured competitively and in accordance with established procurement rules and regulations.**
- » **Local procurement policies should describe how the recipient will procure supplies, materials, services and equipment.**

Procurement: Overview

- » **The policy should assure that all purchases are handled fairly and in a manner that encourages full and open competition.**
- » **Recipients should follow the procedures established in the policy and document how all procurements were handled.**

Overview - continued

- » **Every agency should keep procurement records that allow an auditor or other interested party to track the specific nature of the goods or services bought with public funds, and the entire process used to purchase those goods and services. The purpose of this documentation is to show that the public body obtained high quality goods and services at the lowest possible price through an open, competitive process.**

Procurement Laws and Policies

CDBG program rules require the following:

- CDBG Recipients must establish requirements for local procurement policies and procedures based on full and open competition
- Policies must address all five methods of procurement
- Policies and procedures must include standards of conduct governing employees involved in the award or administration of contracts
- “Cost plus” contracts are specifically prohibited

Procurement Laws and Policies -continued

- » **The recipient must ensure that all purchase orders and contracts include clauses required by Federal statutes, executive orders and implementing regulations**
- » **All CDBG recipients must obtain certification from any transaction participant that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation.**

Procurement Standards

CDBG recipients must use procurement procedures that include the following:

- Maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders
- Maintain a written code of standards governing performance of employees in contract award and administration

Procurement Standards – continued

- Review transactions to avoid unnecessary or duplicative purchase
- Contract only with responsible contractors
- Maintain written records for each procurement action sufficient to detail the significant history of the transaction
- Adopt written procedures to handle and resolve disputes relating to procurement actions

2 CFR 200.319 Competition

- » **Must allow for full and open competition**
(templates for RFP/RFQ and bid specs cannot be provided by administrators, refer recipient to IEDA staff/webpage for templates)
- » **No geographical preference (unless specifically allowed by Federal law)**
- » **Must have written and weighted selection procedures / criteria**
- » **Must clearly identify all bidding requirements**
- » **Prequalified lists of persons, firms or products must be current**

Certification of Compliance

When did this Form become effective? **FY 2016 awarded projects.**

When is this Form required to be uploaded into IowaGrants? **Prior to first construction draw.**

Where is it uploaded? **Required Uploads section.**

Applies to all procurement for specified CDBG award.

Certification of Compliance CDBG Procurement Standards

CDBG Applicant/Recipient: _____

Application year: _____

2 CFR 200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

I certify that I am the chief elected official and that the community listed above did not violate the above competition statute when competitively procuring engineering or administrative services as part of the potential CDBG award.

Signature: _____

Printed Name: _____

Date: _____

2 CFR 200.320 Procurement Methods

There are five types of procurement methods:

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

Micro Purchase

- » **Best suited to obtaining small quantities of supplies/services**

- » **Must be in aggregate less than \$3,000**
 - Unless state or local policy has a lower threshold
 - Cannot exceed \$2000 for construction subject to Davis-Bacon Act
 - This limit may have recently increased – waiting for HUD guidance

- » **Competition is sought through oral or written price quotations**

Small Purchase

- » **Best suited to obtaining small quantities of supplies/services**

- » **Must be less than \$150,000**
 - Unless state or local policy has a lower threshold
 - This limit may have recently increased – waiting for HUD guidance

- » **Competition is sought through a minimum of two written price quotations from qualified sources**

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

Competitive Proposal Method

- **More than one source submitting a proposal, and either a fixed-price or not-to-exceed type contract is awarded**
- **Typically used in the selection of professional service providers**
- **Two types:**
 - **Request for Proposal (RFP)**
 - **Request for Qualifications (RFQ)**

Competitive Proposals - RFP

- » **Must clearly and accurately state technical requirements and scoring criteria for goods and services required**
- » **Grantee must publicize / publish the RFP, and honor reasonable requests for an opportunity to compete**
- » **Proposals must be solicited from an adequate number of qualified sources. Utilize direct solicitation from known providers.**
- » **Grantee must conduct a technical evaluation, and score the criteria (price may be one criterion), of the submitted proposals**

Competitive Proposals – RFP (continued)

- » **Grantee must conduct negotiations with responsive and responsible offerors, based on evaluation of proposals**
- » **Grantee must award the contract to the most responsive and responsible offeror**
- » **The successful offeror must clearly be the most advantageous source of the goods and services.**
- » **Price may be included as one of the review criteria.**

Competitive Proposals – RFQ

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

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

RFQ Negotiation Procedure

- 1. Negotiate with top ranked firm, including “detailed cost analysis” of proposed price**
- 2. If unsuccessful, negotiate with #2 firm, and so on until acceptable contract**
- 3. Once negotiation with a firm ends, cannot reopen negotiations with that firm**

COMPLIANCE PROBLEM SOLVING

5 Case Studies

- Break into table groups to review questions.

Case Study Question #1

Engineering design fees (for final design) were budgeted as part of CDBG eligible costs for a water treatment plant application. The application was successful, however due to a DNR violation order time constraint, the engineer's final design contract was executed prior to ROF so the engineer could proceed to final design as quickly as possible.

Are the engineering final design fees reimbursable with CDBG funds?

Case Study Answer #1

YES - provided the engineer was adequately procured for final design prior to the application, AND the engineering contract was executed AFTER the IEDA Award Letter.

Also, the project specifications cannot be released / advertised for bids until ROF. (no choice-limiting action)

Case Study Question #2

The City of XYZ accurately utilized the RFP process for both writing a Housing application as well as subsequent project administration. A local COG was chosen by a City to perform both activities. The COG has also then offered to provide technical inspection services for the project.

Does the City therefore have to again, go through the procurement process for said technical services?

Case Study Answer #2

YES – Procurement must be performed (without COG assistance) for the inspection services regardless of prior procurement for application writing and grant administration services.

The ideal scenario would have been to procure for all three services up front.

Case Study Question #3

A City advertises and accepts bids for rehabilitation of a home at 456 Main Street. Only one bid is received, however other bidders are determined to be qualified. Other potential bidders did not respond to this bid.

Question 1: Is this case considered a sole source or is it a single source procurement?

Question 2: What information/documents does the City /Administrator need to submit to their IEDA Project Manager in order to request approval of this method of procurement?

Case Study Answer #3

Question 1: Is this case considered a sole source or is it a single source procurement?

“Sole Source” – When a product or service is only available from one source.

“Single Source” - Multiple sources are available, but only one source responds or is capable to provide the product or service.

Question 2: What information/documents does the City / Administrator need to submit to their IEDA Project Manager in order to request approval of this method of procurement?

A: Bid tabulations of submitted bid with preliminary cost estimate, letter from City requesting alternate procurement method, documentation of other sources available to bid.

Case Study Question #4

During solicitation of an approx. \$4000 professional services contract for an appraiser, it was determined that RFP's were not developed, advertised and solicited and only one firm was verbally requested to submit a proposal, therefore adequate procurement via the competitive proposal method did not occur.

Can the situation be remedied?

Case Study Answer #4

YES – Have the Recipient develop some criteria to evaluate / bid on, then solicit a minimum of two qualified firms for written quotes. Award the contract under the Small Purchase Method of procurement. 2CFR 200.320(b)

Case Study Question #5

A prime construction contractor's (as well as three subcontractors) contracts did not include the required federal CDBG language nor the wage rate tables.

Are Davis-Bacon wage rates therefore not applicable for the project?

How can this be resolved?

Case Study Answer #5

NO – Davis-Bacon wage rates apply. Hopefully payrolls and interviews reflect accurate wage rates (based on a pre-bid and pre-con meeting with administrator).

All of the contracts must be amended to include the required federal language and wage rates. Prime contractor contract must be amended by City Council. Sub contractors contracts must be amended by prime contractor.

Non-competitive / Single-Source Provider Method

- This method may be used only under VERY limited circumstances
- If unsure of process, Grantee should consult state CDBG staff before utilizing this method
- Must do a cost analysis / cost estimate verifying proposed cost data
- "Sole-source" – offer solicited from one source
- "Single-source" – offer solicited from multiple sources but only one legitimate response, or competition from multiple sources is deemed inadequate.

Procurement with Small Business Minority/Women Owned Firms

» **Recipients must make following efforts to use minority and women-owned firms when possible:**

- Send bid packet notification to Plan rooms & Clearinghouses, as well as direct solicitation to known MBE/WBE
- Divide requirements into smaller tasks (traffic signage / management)
- Use Small Diverse Business Program or Bureau of Small Business Services
- Require prime contractors to take same affirmative steps listed above

Documenting Compliance

Grantees / administrators must document....document:

- A description of the procurement policies and procedures used on the CDBG-funded project
 - Good record-keeping
- Data on all contracts awarded, such as:
 - Names of contractors with contact information
 - Types of contractor (for example, small business, minority-owned, etc.)
 - Amounts of contracts awarded

Documenting Compliance – cont.

- Evidence that the state has reviewed the local government's procurement records
- Documentation of contract work, including:
 - Copies of award letters
 - Inspection reports
 - Contract amendments
 - Payment log
 - Monitoring letter/findings

Debarred Contractors

- » **Must check the Federal list of debarred contractors:**
- » ***Prior to execution of contract(s)***
 - All administrators / designers / contractors
 - All sub-recipients
 - All local units of government

<http://www.sam.gov>

https://www5.hud.gov/ecpcis/main/ECPCIS_List.jsp

IowaGrants Contractor Clearance

Contract Award/Agreement Date: 09/11/2017

Clearance Date Checked: 09/08/2017

You MUST search the [SAM database](#) PRIOR TO the contract award/agreement date to insure the contractor is NOT debarred and excluded from Federal procurement and non-procurement programs.

Opening Bid Date: 09/07/2017

If the contractor is directly contracted without a competitive solicitation (i.e. COG or Subcontractor), use 1/1/1900 as the Opening Bid Date.

Contract End Date:

Construction Start Date:

Mandatory Contract Provisions

Required CDBG Contract Language

- » **Provision for remedies**
- » **Termination clause**
- » **Non-discrimination (Executive Order 11246)**
- » **Reporting Requirements**

Mandatory Contract Provisions – cont.

- » **Copyrights and rights in data**
- » **Access and maintenance of records**
- » **Records retention (minimum of 5 years after final payments (FY Program close-out))**
- » **Compliance with Environmental statutes**
- » **Energy efficiency**

Mandatory Contract Provisions – Construction Contracts > \$2000

» For Construction Contracts

- Copeland Anti-Kickback Act
- Compliance with Contract Work Hours and Safety Standards Act
- Davis-Bacon Act
- Contracting/Employment Opportunities (Section 3)

Section 3 Overview / Changes

» Overview

- » Section 3 is HUD's legislative directive for providing preference to public housing residents and low-income residents of the local community (regardless of race or gender), and the businesses that substantially employ these persons, for new employment, training and contracting opportunities resulting from HUD-funded projects
- » ensure that public housing residents and low- and very low- income persons, and the businesses that employ these individuals, are notified about the expenditure of HUD funds in their community and encouraged to seek opportunities, if created

Section 3 Overview / Changes

» When Section 3 Applies

- Section 3 applies to projects/activities involving housing (construction, demolition, rehabilitation) or other public construction—i.e. roads, sewers, community centers, etc.

Section 3 applies to CDBG projects when:

- The recipient's CDBG contract with the State of Iowa exceeds \$200,000, and involves housing and/or public construction.
 - The recipient has contracted with subcontractors for services and the contract amount is over \$100,000.
- If no individual subcontract for activities exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient (City/County and the State)

Section 3 Overview / Changes

» Procurement & Bid Documents

- CDBG recipients must include Section 3 language in all procurement / publishing and bid documents. The required language to be included in these documents can be found in the Chapter / Appendix 8 of the CDBG Management Guide.
- In addition to the required language, recipients must include the “Intent to Comply with Section 3” form with all RFPs.

Section 3 Overview / Changes

» **Selecting Contractors with Section 3**

- Section 3 requires recipients make an effort to the “greatest extent feasible” to facilitate contracts to Section 3 businesses
- recipients may give preference to Section 3 businesses as a means of evaluation criteria for professional services contracts where proposals are solicited
 - to give preference to Section 3 businesses during the contract awarding process, recipients must ask the contractor to certify whether or not they are a Section 3 business when soliciting for proposals
 - “Intent to Comply With Section 3” form that will be provided with procurement documents and submitted by bidders

Section 3 Overview / Changes

» Penalties for Non-Compliance

- Communities and contractors found in violation of Section 3 requirements may result in:
 - Sanctions from HUD
 - Termination of contract for CDBG funds
 - Debarment or suspension from future HUD assisted (CDBG) contracts
- Non-compliance with Section 3 can impact a community's ability to receive CDBG funding in the future.
- You will be required to keep track of contractors who are found in violation of Section 3 requirements and report these to the IEDA

Section 3 Overview / Changes

» Reporting Requirements & Forms

- If the expenditure of CDBG funds does not result in new employment, contracting, or training opportunities, the requirements of Section 3 have not been triggered. However, even if the CDBG-funded/ Section 3 covered project did not create new employment opportunities, this information must be reported to IEDA.
- To report Section 3 data to IEDA, recipients will report annually to IEDA. This report will be submitted through lowagrants.gov and will be due by December 31st of each year.
- Recipients will need to report Section 3 accomplishments and/or provide a detailed explanation of why Section 3 goals were not met.

» Section 3 Business Registry

- HUDS' online database

Construction Contractor Bonding Requirements

- Bid Bonds
- Performance Bonds
- Payment Bonds

Bid Bonds

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

Administrator should request documentation of Bid Bond from engineer prior to Monitoring Visit.

Performance Bonds

- » **Used to ensure completion of work**
- » **Must equal 100% of the contract price**
 - Bonds may be held for up to one year after date of final completion

Payment Bonds

- » **Used to ensure payment to subcontractors and suppliers**
- » **Must be equal to 100% of the contract price**

Conflicts 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"

Conflicts 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**

Conflicts of Interest - continued

» Examples:

- Grant Administrator cannot help grantee with the procurement of grant administration if they intend to submit proposal
 - » 2CFR 200.319 Competition
- Mayor / City Clerk cannot sit on bid committee if husband / brother is bidding on a construction contract

ATTACHMENT A

GENERAL PROVISIONS

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

12.0 CONFLICT OF INTEREST.

- (c) CONFLICTS OF INTEREST. Chapter 68B, Code of Iowa, the "Iowa Public Officials Act", shall be adhered to by the Recipient, its officials and employees.

The End

- » **Why do we follow procurement**
- » **Five types of procurement**
- » **Document Compliance**
- » **Debarred Contractors List**
- » **Contract Provisions**
- » **Bonding Requirements**
- » **Conflicts of Interest**