



CDBG Procurement

For Grant Administrators

Procurement 101

- When and why procurement is required
- How to purchase goods and services in accordance with CDBG regulations
- Summary of five methods of procurement
- Summary of Request for Proposals (RFP) & Request for Qualifications (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.*

State Procurement Laws and Policies-

CDBG program rules are at:

Electronic Code of Federal Regulations, Title 2 →
Subtitle A → Chapter II → Part 200 – Uniform
Administrative Requirements, Cost Principles, and
Audit Requirements for Federal Awards

- *State must establish requirements for local procurement policies and procedures based on full and open competition*
- The Code of Alabama 1975 (Title 39 and Title 41)
 - <http://alisondb.legislature.state.al.us/acas/codeofalabama/1975/coatoc.htm>

State Procurement Laws and Policies-

The Methods of Procurement to be discussed, as they relate to the Electronic Code of Federal Regulation and the Code of Alabama Title 39, are:

- Micro-Purchases
- Small Purchase Procedures
- Sealed Bids
- Competitive
- Non-Competitive

“Cost Plus contracts are prohibited”

State Procurement Laws and Policies (continued.)

- The state 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 develop and adopt policies and procedures for procurement that comply with both Electronic Code of Federal Regulations (Super-Circular) AND any stricter State or local standards.

Grantee must:

- Maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders
- *Understanding that NO employee, officer or agent of the grantee or sub-grantee shall participate in selection or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent exist*

Procurement Standards (continued.)

Grantee Must Also:

- Maintain written code of standards governing performance of employees in contract award and administration
- Review transactions to avoid unnecessary or duplicative purchases. *(Who decides what is unnecessary?)*
- Contract only with responsible contractors *(Have complete bid that proves their ability to fulfill contract)*
- Maintain written records for each procurement action sufficient to detail the significant history of the transaction *(legal ad, bid package, etc.)*
- And adopt written procedures to handle and resolve disputes relating to procurement actions.
- **Notify ADECA CDBG staff immediately of any protests.**

Competition

All transactions must allow for full and open competition

- No geographical preference (unless specifically allowed by Federal law)
- No placing of unreasonable requirements on bidders
 - No unnecessary experience or excessive bonding requirements
 - No non-competitive awards
 - No organizational conflicts of interest
 - No “brand only” specifications
 - No arbitrary actions in procurement process

Competition

All transactions must allow for full and open competition

- When contracting for Architectural and Engineering services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms given the nature and size of the project.
- Must have written selection procedures that clearly identify all requirements which the offerors must fulfill and all other factors to be used in the evaluation of bids/proposals including weights, scoring, etc.

Competition

All transactions must allow for full and open competition

- The RFP must clearly identify all bidding requirements
- Prequalified lists of persons, firms or products must be current

Procurement Methods

There are Five types of procurement methods:

- Micro-Purchases *(Identified in the Super Circular but pending Title 39 and 41)*
- Small Purchase Method
- Competitive Sealed Bid Method
- Competitive Proposal Method
- Noncompetitive or Sole Source Provider Method

Micro-Purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000

To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers.

Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

Small Purchase

- Small purchase procedures are those that are relatively simple and informal procurement methods for securing low cost professional services (audits, appraisals, etc.), supplies or other property that do not cost more than the current threshold of \$50,000.
- If used, the grantee must document the receipt of an adequate number (usually at least three) of price or rate quotations from qualified vendors.
- Competition is sought through oral or written price quotations

Competitive Sealed Bid-

The sealed bid method is the preferred method for procuring construction.

- Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
- Cost Plus contracts are strictly forbidden by CDBG.

Competitive Sealed Bid-

In order for sealed bidding to be feasible, the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description has been made available
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Competitive Sealed Bid-

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publically advertised;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond

Competitive Sealed Bid-

If sealed bids are used, the following requirements apply *(continued)*:

- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
 - Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of
- Any or all bids may be rejected if there is a sound documented reason.

Competitive Sealed Bid-

Competitive Seal Bid Process:

- Obtain Federal Wage Rates
- Have Architect/Engineer prepare technical bid specifications
- Include “Standard Bid Package” in the bid/contract documents
- Have Attorney Review Documents
- Prequalify Contractors *(optional) (see Code of Alabama, Sec 39-2-4 (b))*

Competitive Sealed Bid-

Competitive Seal Bid Process: *(continued)*

- Advertise:
 - State, County, or instrumentality thereof
 - *at least once each week for three consecutive weeks*
 - Municipality, or instrumentality thereof
 - *at least once in a newspaper of general circulation published in the municipality*
 - *If no newspaper, the awarding authority shall advertise by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for the length of time as may be determined.*
 - *In addition to bulletin board notice, sealed bids shall be solicited by mail to all persons who have request they be listed for solicitation on bids for the public works contracts*

Competitive Sealed Bid-

Competitive Seal Bid Process: *(continued)*

(In addition)

- With the exception of the Department of Transportation, for "all public works contracts" involving an estimated amount in excess of **\$500,000**, awarding authorities shall also advertise for sealed bids "at least once in three newspapers of general circulation throughout the state."

Competitive Sealed Bid-

Competitive Seal Bid Process: *(continued)*

- The advertisements shall briefly describe:
 - the improvement
 - state that plans and specifications for the improvement are on file for examination in a designated office of the awarding authority
 - state the procedure for obtaining copies of those plans and specifications
 - state the time and place in which bids shall be received and opened
 - and identify whether prequalification is required and where all written prequalification information is available for review

Code of Alabama, Section 39-2-2 and 39-2-4

Competitive Sealed Bid-

- **Competitive Seal Bid Process:** *(continued)*
 - Distribute bid documents (plans, spec, etc.) to interested parties.
 - Verify Wage Decision 10 days prior to bid opening
 - Receive / Log-In Bids-

Competitive Sealed Bid.

- **Competitive Seal Bid Process:** *(continued)*
 - Conduct Public Bid Opening
 - Review Bids
 - Verify Low Bidder's debarred status and evidence of insurance
 - Award Contract *(within 30 days of bid opening)*
 - Secure Payment/Performance Bonds
 - Execute Contract.

Competitive Sealed Bid.

- **Competitive Seal Bid Process:** *(continued)*
 - All bid guaranties, except those of the three lowest bona fide bidders, should be returned immediately after bids have been checked, tabulated, and the relation of the bids established.
 - The bid guaranties of the three lowest bidders shall be returned as soon as the contract bonds and the contract of the successful bidder have been properly executed and approved.
 - When the award is deferred for a period of time longer than 15 days after the opening of the bids, all bid guaranties, except those of the potentially successful bidders, shall be returned.

Competitive Sealed Bid.

- **Competitive Seal Bid Process:** *(continued)*
 - If no award is made within 30 days after the opening of the bids, or such other time as specified in the bid documents, all bids shall be rejected and all guaranties returned, except for any potentially successful bidder that agrees in writing to a stipulated extension in time for consideration of its bid, in which case the awarding authority may permit the potentially successful bidder to substitute a satisfactory bidder's bond for the cashier's check submitted with its bid as a bid guaranty

Competitive Proposal Method

- The technique of 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. It is generally used when conditions are not appropriate for the use of sealed bids.
- Typically used in the selection of high cost professional service providers (Admin, Engineering, etc.)
- Two types:
 - *Request for Proposal (RFP)*
 - *Request for Qualifications (RFQ)*

Competitive Proposal Method

If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical

(2) Proposals must be solicited from an adequate number of qualified sources

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients

Competitive Proposal Method

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

- *The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.*

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
- Grantee must conduct a technical evaluation 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 offer or
- The successful offeror must clearly be the most advantageous source of the goods and services.

Competitive Proposals – RFQ.

For procurement of architecture or engineering services Request for Qualifications (RFQ) method may 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.

Policy Letter #1, Revision 8

Policy on selection of Engineers, Architects, Consultants, other professional Services relating to Procurement of and Expenditures made, in regard to Sate CDBG Funds.

- Services not more than \$100,000 in the aggregate - grantee may use "Small Purchase Procedures"
- Services costing over \$100,000 - require competitive negotiations as defined in Public Works. § 39-2-2
- an applicant need not apply these procurement procedures if it chooses to contract with a Regional Planning and Development Commission for professional services.

Non-competitive/Sole-Source Provider Method

This method may be used only under VERY limited circumstances

- ❖ Grantee should consult state CDBG staff before utilizing this method
- ❖ Item or service is available from one source (e.g. a specialty survey for a planning report or a company that specializes in horizontal drilling)
- ❖ Can be used when a public emergency or urgency exists (requires explanation of circumstances)
- ❖ Must do a cost analysis verifying proposed cost data

Procurement with Small Business Minority/Women Owned Firms

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

- Place qualified firms on solicitation lists
- Divide requirements into smaller tasks
- Use SBA and Minority Business Development Agency services
- Require prime contractors to take same affirmative steps listed above

Documenting Compliance-

Grantees must document following:

- A description of the procurement policies and procedures used on the CDBG-funded project
- 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 - continued.

- 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:
 - All contractors
 - All sub-recipients
 - All local units of government

Debarred Contractors

All Contractors, Sub-Contractors, and Units of Local Government must be registered in the SAM.

<https://www.SAM.gov>

Executive Order 12549 Debarment and suspension

- Section 1. (a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.
- (b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.

Mandatory Contract Provisions-

- **Provision for remedies** (Legal remedies for breach of contract)
- **Termination for cause and convenience** (All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for the settlement)
- **Non-discrimination** (For all contracts in excess of \$10,000, the contractor must comply with Executive Order 11246 (September 24, 1965) as amended by EO 11375 (October 13, 1967) – contractor will not discriminate based on race, color, religion, sex or national origin.)
- **Reporting Requirements**
- **Patent Rights** (requirements pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract)

Mandatory Contract Provisions continued-

- **Copyrights and rights in data**
- **Access to records** (Access by grantee to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination excerpts and transcriptions)
- **Records retention** (minimum of 5 years after final payments)
- **Compliance with Environmental statutes** (Clean Air Act, Clean Water Act, and EPA Regulations, \$100,000 or more)
- **Energy efficiency** (Subject to requirements of the Clean Air Act and the Federal Water Pollution Control Act and regulations of the EPA. 40 CFR Part 15) -

Mandatory Contract Provisions – Construction Contracts

- For Construction Contracts
 - Copeland Anti-Kickback Act
 - Compliance with Contract Work Hours and Safety Standards Act
 - Davis-Bacon Act (contracts over \$2,000)
 - Beason Hammon Taxpayer and Citizen Protection Act
 - Title VI, Civil Rights Act of 1964 and Section 109 of the Housing & Community Development Act of 1974 -

Mandatory Contract Provisions – Construction Contracts

- For Construction Contracts
 - Clause for compliance to the Section 504 of the Rehabilitation Act of 1973 (\$2,500 or more)
 - Clause for compliance with Section 402 of the 1974 Vietnam Veterans Act (\$10,000 or more)
 - Clause for compliance with the Age Discrimination Act 1975 (\$2,000 or more)

Construction Contractor Bonding Requirements

- Bid Bonds
- Performance Bonds
- Payment Bonds

Bid Bonds

- Used to assure bidder's good-faith intentions
- Must be made to the contracting party
- Must equal 5% of the bid price *(State requirement capped at \$10,000 does not apply to Federal Monies)*
- Submitted in a form that guarantees funds availability
- Checks are returned to unsuccessful bidders

Performance Bonds

Used to ensure completion of work

- Bond must be equal to 100% of the contract price (39-1-1, a) Not required for contracts less than \$50,000
- Must be held for up to one year after date of final completion - - - or - - - the length of the warranty period

Payment Bonds

Used to ensure payment to subcontractors and suppliers

- 50% for contracts under \$100,000
- 100% for contracts \$100,000 or over
(Simplified Acquisition Threshold) (24CFR85.36, h (3) & Code of AL 39-1-1)
- Must guarantee payments to subcontractors and material suppliers
- Must be held for up to one year after date of final completion - - - or - - - the length of the warranty period

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-

Contact Information

If you have any questions or if you need clarification for any information presented in this module feel free to contact me at:

Randy Ray

(334) 353-3409

Or

[randy.ray @ ADECA. Alabama.gov](mailto:randy.ray@ADECA.Alabama.gov)