

CHAPTER 14: PROCUREMENT



CHAPTER PURPOSE & CONTENTS

This chapter provides an overview of the federal procurement requirements. It covers the basics of Part 85.

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14.1 Overview of Procurement Requirements

- ✓ When a grantee elects to hire a contractor, whether to administer a program, complete a task or do construction, those contractors must be procured competitively. This section highlights the procurement rules.

Key Topics in This Section	✓ Procurement requirements and methods
Regulatory/Statutory Citations	§570.502, §570.610, §85.36
Other Reference Materials on This Topic	✓ CPD Notice 96-05 ✓ Executive Order 12549

- ✓ Both grantees and subrecipients must follow federal procurement rules when purchasing services, supplies, materials, or equipment. The applicable federal regulations are contained in:
 - State and local governments and Indian tribes – 24 CFR Part 85. A copy of Part 85 is included in the attachments to this chapter;
 - Nonprofits, institutions of higher education and hospitals – OMB Circular A-110, as implemented through 24 CFR Part 84.
- ✓ In addition to federal regulations, most states and many local governments have laws and regulations regarding procurement. Each entity receiving CDBG funds should be aware of state and/or local laws that may affect procurement policies.
- ✓ Grantees should adopt procurement policies that describe how the grantee or subrecipient will procure supplies, materials, services, and equipment. The policy should assure that all purchases are handled fairly and in a manner that encourages full and open competition. Grantees should follow the procedures established in the policy, and document how all procurements were handled.
- ✓ The “essence of good procurement” can be summarized as follows:
 - Identify and clearly specify standards for the goods or services the grantee or subrecipient wants to obtain;
 - Seek competitive offers to obtain the best possible quality at the best possible price;
 - Use a written agreement that clearly states the responsibilities of each party;



- Keep good records; and
- Have a quality assurance system that helps the grantee or subrecipient get what it pays for.
- ✓ There are four methods of procurement that are identified in the federal regulations:
 - Small purchase procedures;
 - Sealed bids;
 - Competitive proposals; and
 - Non-competitive proposals.
- ✓ Please note that the following training manual text is an abbreviated summary of the procurement rules and grantees are encouraged to read Part 85.36 in its entirety (attached) as well as any applicable state or local procurement laws.

14.1.1 Small Purchase Procedures

- ✓ The small purchase procedures allow recipients to acquire goods and services totaling no more than **\$100,000**, without publishing a formal request for proposals or invitation for bids.
 - This method of procurement is typically used to purchase commodities such as equipment or other materials.
 - In the event that a grantee is purchasing materials that will exceed \$100,000, they must use the sealed bid process.
- ✓ The small purchases method can also be used to acquire eligible types of services, such as professional consulting, environmental review, or planning. This method cannot be used if the services contract will exceed \$100,000 in value. If the services contract will exceed \$100,000, the grantee must issue an RFP under the competitive proposals approach (see below).
- ✓ In general, the small purchases procedures also should not be used to acquire construction contractors. It is recommended that these acquisitions occur under the sealed bid approach outlined below.
- ✓ Under the small purchases method, grantees send a request for quotes to potential vendors with a detailed description of the goods or services needed. In return, they receive competitive written quotations from an adequate number of qualified sources.
 - Each quote should include pricing information that allows the grantee to compare costs across bidders and ensure cost reasonableness.
 - Documentation of the quotes shall be maintained in the grantee's files.
- ✓ The award should be made to the lowest responsive and responsible source.

14.1.2 Sealed Bids (Formal Advertising)

- ✓ Sealed bids (Formal Advertising) should be used for all construction contracts or for goods costing more than \$100,000.
- ✓ Competitive sealed bidding requires publicly solicited sealed bids and a firm-fixed-price lump sum or unit price contract is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.



- ✓ In order for formal advertising to be feasible, the following minimum conditions must be present:
 - A complete, adequate and realistic specification or purchase description is available.
 - Two or more responsible suppliers are willing and able to compete effectively for a grantee's business.
 - The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder can appropriately be made principally on the basis of price.
- ✓ When the competitive sealed bid (formal advertising) process is used, the following requirements apply:
 - **Publication Period:** The invitation for bids must be publicly advertised and bids solicited from an adequate number of suppliers. The publication should be published at least once in a newspaper of general circulation, providing sufficient time prior to bid opening. If the publication period is not of sufficient time to attract adequate competition, the bid may have to be re-advertised.
 - **Clear Definition:** The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for bidders to properly respond to the invitation.
 - **Public Opening:** All bids must be opened publicly at the time and place stated in the invitation for bids. The public is allowed at that time to review the bids.
 - **Selection and Contracting:** A firm-fixed-price contract award must be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs must be considered in determining which bid is lowest.
 - **Rejection of all Bids:** All bids may be rejected when sound documented reasons exist. Such documentation shall be made a part of the files.

14.1.3 Competitive Proposals

- ✓ Competitive proposals are used to purchase professional services where the total cost will exceed \$100,000. Under this procurement method, the grantee must publish a written request for submissions and then review these submissions based on established selection criteria.
- ✓ The grantee must solicit proposals from an adequate number of qualified sources.
- ✓ Under this approach, there are two possible methods of soliciting proposals.
 - A request for proposals asks that offerers submit both qualifications and cost information.
 - A request for qualifications can be used for purchasing architecture and engineering services. It only asks for information on the offerer's expertise/experience and not on cost, subject to a negotiation of fair and reasonable compensation. When acquiring any service that is not architecture or engineering, the full RFP process must be used.
 - For example, if a grantee were to hire a for-profit CDBG contract administrator and that contract exceeded \$100,000, an RFP would be required.



- ✓ When acquiring architectural or engineering services, either a RFP or a RFQ may be used. Note that if an architectural or an engineering firm is being hired to provide a non architectural/engineering service that service must be procured using either the small purchases process or a RFP. For example, some engineering firms also provide construction and grants management services. In that situation, a RFQ cannot be used and either the small purchases (if it is less than \$100,000) or a RFP must be used.
- ✓ When Competitive Proposals are utilized, the following requirements apply.
 - Publication Period: Proposals must be solicited from an adequate number of qualified sources and an advertisement must be published. RFPs/RFQs should be published in a sufficient timeframe before the proposals/qualifications are due.
 - Clear Definition: The RFP/RFQ must identify the general scope of work and all significant factors of evaluation, including price where appropriate, and their relative importance.
 - Technical Evaluation: The grantee must provide a mechanism for technical evaluation of the proposals received, determinations of responsible offerer and the selection for contract award.
 - Award: Award may be made to the responsible offerer whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerers should be notified promptly. The contract can be either a fixed price or a cost reimbursement type.

14.1.4 Non-competitive Proposals

- ✓ Non-competitive procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:
 - Where the item is available only from a single source;
 - Where a public emergency or urgent situation is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods; or
 - Where after solicitation of a number of sources, competition is determined inadequate.

14.1.5 Conflict of Interest

- ✓ Grantees must develop and maintain a written code of standards that helps to prevent conflicts of interest in procurement.
 - This written code of conduct must apply to all employees, officers, agents of the grantee, members of their immediate family, and partners.
- ✓ The code shall prevent financial interest or other benefits earned for any of these persons due to a CDBG-related procurement action. These persons also cannot solicit or accept gratuities, favors or other items of monetary value from contractors. Grantees are allowed to establish minimum thresholds below which the financial interest is not substantial or is of nominal value.
 - For example, many grantees have rules that nominal items worth less than \$10 or \$25 are not considered to be a conflict.



14.1.6 Excluded Parties

- ✓ Grantees must not make any award (subgrant or contract) to any organization which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."
 - This applies to any CDBG-assisted contract at any tier in the process.
 - To learn more about excluded parties, go to: <http://www.epls.gov/>