



# **CONTRACTING & PROCUREMENT**

# Requirements for Recipients of Funding (Grantees & Subgrantees)

## ❖ 24 CFR 84

- ✓ *Institutions of Higher Education*
- ✓ *Hospitals*
- ✓ *Other Non-profit Organizations*

## ❖ 24 CFR 85

- ✓ *State Governments*
- ✓ *Local Governments*
- ✓ *Federally Recognized Indian Tribal Governments*



# Procurement Standards

- ❖ **To insure materials and services are obtained in a cost effective manner and in compliance with Federal Statutes & Executive Orders**
- ❖ **Grantees & Subgrantees use own procurement procedures**
  - ✓ *Reflect State & Local laws*
  - ✓ *Conform to applicable Federal Law*
  - ✓ *Conform to identified standards*



# Procurement Standards

- ❖ **Recipient (grantee) is responsible for settling & satisfying all contractual & administrative issues**
- ❖ **Grantees & Subgrantees maintain written code of standards regarding employee performance with regard to contract administration**
  - ✓ ***Conflicts of interest***
  - ✓ ***Identity of Interest***
  - ✓ ***Gratuities, favors, anything of monetary value***
  - ✓ ***Applies to employees, officers, agents & their family members***



# Procurement Standards

- ❖ **Review of proposed procurements to eliminate duplication**
- ❖ **Foster economy of scale by entering State & Local Government agreements**
- ❖ **Use Federal excess & surplus property if eligible**
- ❖ **Use “value engineering” clauses in large construction projects to obtain price reductions**
- ❖ **Avoid purchasing unnecessary items**



# Procurement Standards

- ❖ **Analyze lease & purchase alternatives for cost-effectiveness**
- ❖ **Accept, where economically feasible, products & services measured by metric system**
- ❖ **Preference for energy-efficient, environmentally friendly products & services**
- ❖ **Utilize local businesses from beneficiary community as much as possible (document)**
- ❖ **Employ, and require contractors to employ, workers from within beneficiary community as much as possible (Section 3) (Document)**



# Procurement Standards

- ❖ **Facilitate participation in competition by small businesses, disabled, veteran, minority and women-owned businesses**
- ❖ **Consider whether competitor for large contract will subcontract to small businesses, disabled, veteran, minority and women's businesses**
- ❖ **Encourage contracting with consortium of small businesses, disabled, veteran, minority and women-owned businesses when contract is too large for single firm**



# Procurement Standards

- ❖ **Use services of SBA or DOC Minority Business Development Agency to solicit small businesses, disabled, veteran, minority and women-owned businesses**
- ❖ **Preference for disabled Veterans**
- ❖ **Use current pre-qualified lists to ensure open & free competition**
- ❖ **Use appropriate procuring contract terms**
  - ✓ *No percentage of construction cost*
  - ✓ *No cost-plus-percentage-of-cost*



# Procurement Standards

❖ **Awards only to responsible contractors with ability to perform successfully under terms & conditions of contract**

✓ **Considerations:**

- ***Contractor integrity***
- ***Compliance with Public Policy (including Section 3 where applicable)***
- ***Record of past performance***
- ***Resources available or accessible***
- ***Not debarred or suspended***



# Procurement Standards

- ❖ **Maintain detailed records of procurement history**
  - ✓ *Will be examined at monitoring or when funder thinks necessary*
- ❖ **Time and Material contracts only if**
  - ✓ *No other contract suitable*
  - ✓ *Contract includes a ceiling price*
  - ✓ *Contractor exceeds ceiling at own risk*
- ❖ **Have written protest procedures**
  - ✓ *To handle disputes about procurement*
  - ✓ *Advise Funder if dispute occurs*



# Competition

- ❖ **Full and Open Competition**
- ❖ **No restriction or elimination of competition**
  - ✓ *No unreasonable requirements to qualify to do business*
  - ✓ *No unnecessary experience or excessive bonding*
  - ✓ *No noncompetitive pricing practices between firms or affiliated companies*
  - ✓ *No noncompetitive awards to consultants on retainer*
  - ✓ *No organizational conflicts of interest*



# Competition

- ✓ ***No specifying brand-name products***
- ✓ ***Any arbitrary action in procurement process***
- ❖ **No geographical preferences**
  - ✓ ***Except where mandated by Federal Statute (such as Section 3)***
  - ✓ ***For professional architectural or engineering services, geographic location may be a selection criteria if large enough number available***



# Competition

## Written selection procedure

- ❖ ***Clear & accurate description of requirements for material, product or service***
- ❖ ***All requirements and all other evaluation factors for bids & proposals***
- ❖ ***Compliance with Section 3, preferences and solicitation of targeted businesses***



# Procurement Methods

- ❖ **Small Purchase Procedures**
  - ✓ **Cost not higher than Simplified Acquisition Threshold (\$100,000)**
  - ✓ **Simple and informal**
  - ✓ **Price or rate quotes from a number of qualified sources**
  - ✓ **Maintain documentation**
- ❖ **Contracts in excess contain:**
  - ✓ **Basis for contractor selection**
  - ✓ **Justification for lack of competition**
  - ✓ **Basis for cost or price**



# Procurement Methods

## ❖ **Sealed Bids**

- ✓ **Publicly solicited with complete, adequate & realistic terms, conditions and specifications available**
- ✓ **Bids publicly advertised and solicited from number of known suppliers**
- ✓ **Firm-fixed-price contract**
- ✓ **Preferred method for construction**
- ✓ **Any & all bids may be rejected**
  - ✓ **Document reason for rejection**



# Procurement Methods

## ❖ **Competitive Proposals**

- ✓ **Either fixed-price or cost-reimbursement**
- ✓ **Requests for proposals (RFPs) publicized**
- ✓ **Evaluation factors clear & prioritized**
- ✓ **Solicited from number of sources**
- ✓ **Method for evaluating & selecting**
- ✓ **Award must go to responsible firm with most advantageous proposal**



# Procurement Methods

## **Noncompetitive proposals**

- ❖ **Solicited through only one source**
- ❖ **Competition inadequate after soliciting number of sources**
- ❖ **Contract award unfeasible under small purchase, sealed bids or competitive methods AND one of the following:**
  - ✓ *Sole source*
  - ✓ *Public exigency or emergency – no time for delay*
  - ✓ *Funder authorizes noncompetitive proposals*
- ❖ **Cost analysis required**
- ❖ **Funder may require pre-award review**



# Cost Analysis

- ❖ **Evaluation of separate elements of total cost proposal**
  - ✓ *Allowable*
  - ✓ *Reasonable*
  - ✓ *Related to requirement*
- ❖ **Required for**
  - ✓ *Competitive proposals*
  - ✓ *Sole source negotiations*
  - ✓ *Single bid response*
  - ✓ *Contract modification (including change orders)*



# Price Analysis

## **Lump-sum price comparison without analyzing separate cost elements**

- ❖ **Compare prices received from different proposals to each other**
- ❖ **Compare prices from current proposals with previous ones**
- ❖ **Compare prices to in-house estimates**
- ❖ **Compare to price lists, catalogues or market prices**



# Cost Principles

- ❖ **Allowability of types of costs**
- ❖ **Contract-specific**
- ❖ **State, Local or Tribal Governments – Office of Management & Budget (OMB) Circular A-87**
- ❖ **Private nonprofit other than higher educational institutions or hospitals – OMB Circular A-122**
- ❖ **Educational Institutions – OMB Circular A-21**
- ❖ **For-profits and nonprofits listed in Appendix C of OMB Circular A-122 – Federal Acquisition Regulation (FAR) 48 CFR 1, 31.2**



# Contracts

- ❖ **Contract Administration – written system to insure**
  - ✓ **Contractor conformance with terms conditions & specifications**
  - ✓ **Contract compliance with regulations governing funding (Federal Acquisition Regulations – FAR - and HUD Acquisition Regulations - HUDAR)**
  - ✓ **Adequate & timely follow-up**



# Contracts

## ❖ **REMINDER - PROHIBITED TYPES OF CONTRACTS:**

- ✓ **Percentage of construction cost**
- ✓ **Cost-plus-percentage-of-cost**



# **Contract Provisions**

## **Provisions that apply to all contracts & sub-contracts**

- **Allowance of administrative, contractual or legal remedies for breach of contract or violation of contract**
- **Termination of contract for cause and/or convenience**
- **Funder access to contract & records for audit, oversight, review, etc.**



# **Contract Provisions Continued**

- ❖ **Bid guarantees, performance bonds, payment bonds (or recipient's bonding policy if over \$100,000)**
  - ✓ **Bid Guarantee – 5% of bid price**
  - ✓ **Performance Bond – 100% of contract price**
  - ✓ **Payment Bond – 100% of contract price**
    - **To insure subcontractor payment**
  
- ❖ **All Appendix A provisions**



# **Contract Provisions - Appendix A of 24 CFR 84**

**All contracts to include provisions:**

- ❖ Equal Employment Opportunity (Executive order 11246 amended by E.O. 11375)**
- ❖ Copeland Anti-Kickback Act (18 U.S.C. 874)**
- ❖ Davis-Bacon Act as amended (40 U.S.C. 276a-7)**
- ❖ Contract Work Hours & Safety Standards Act (40 U.S.C. 327 through 333)**
- ❖ Rights to Inventions made under a contract or agreement (37 CFR 401)**



# **Contract Provisions - Appendix A of 24 CFR 84**

- ❖ **Clean Air Act (42 U.S.C. 7401 et seq.) & Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)**
- ❖ **Byrd Anti-Lobbying Amend. (31 U.S.C. 1352)**
- ❖ **Debarment & Suspension (E.O.s 12549 & 12689)**
- ❖ **Drug-Free Workplace Requirements (41 U.S.C. 701)**



# Be Informed!

- Ignorance of regulations does not absolve responsibility for compliance.
- If there is a violation, consequences can be strong, even severe.
- Be sure to take care of due diligence by carefully reading all relevant materials
- Contact funder if there is confusion, get all responses in writing.