

2024 CDBG Certified Grant Administrator Procurement Training

Sarah Plowman, CDBG Project Manager

Iowa Economic Development Authority

sarah.plowman@iowaeda.com 348-6213

CDBG Procurement

Agenda and Today's Goals:

Agenda:

- » Overview
- » Laws
- » Policy Walk-Through
- » Documenting Compliance / Resources

“Big Picture Takeaways”

- » **“Responsible Entity” Responsibilities**
- » **Locally Adopted Policies**
- » **Highest Quality / Lowest Price**
- » **Records that track the process “from soup to nuts”**
- » **“If it’s not documented... it didn’t happen”**

24 CFR Part 570.489(g)

- (g) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. **The State shall establish requirements for procurement policies** and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by [§ 570.489\(h\)](#).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in [2 CFR 200.330](#).

Procurement Laws and Policies

CDBG program rules require the following, as per 24 CFR Part 570.489(g):

- » **CDBG Recipients must establish requirements for local procurement policies and procedures based on full and open competition**
- » **Policies address all methods of procurement**

Procurement Laws and Policies -continued

- » Policies and procedures must include standards of conduct governing employees involved in the award or administration of contracts (adoption of Code of Conduct)
- » “Cost plus” contracts are specifically prohibited
- » The recipient must ensure that all purchase orders and contracts include clauses required by Federal statutes, executive orders and implementing regulations.

POLICY WALK-THROUGH

Which policy, and where do I find it?

Official State of Iowa Website [Here is how you know](#)

IOWA | Economic Development

[Iowa Advantage](#) [Expand Your Business](#) [Grow Your Community](#)

CDBG MANAGEMENT GUIDE & RELATED RESOURCES

CDBG Programs

[Home](#) / [Grow Your Community](#) / [Community Infrastructure](#) / [CDBG](#) / [CDBG Management Guide](#)

2023 APPLICATION ROUND

- [2023 CDBG Application Manual \[PDF: 7MB\]](#)

2022 CDBG MANAGEMENT GUIDE

- CDBG Management Guide – the Guide and Appendices (below) are current as of November 2022 – [\[PDF:748k\]](#)
- Appendix One: Introduction (updated 1/10/2023) – [\[PDF:1.1MB\]](#)
- Appendix Two: Federal Requirements – [\[PDF:983k\]](#)
- Appendix Three: Section 106 Historic Review – [\[PDF:3MB\]](#)
- Appendix Four: Environmental Review – [\[PDF:374k\]](#)
- Appendix Five: Financial Management – [\[PDF:132k\]](#)
- Appendix Six: Upper Story Housing – [\[PDF:525k\]](#)
- Appendix Seven: Downtown Revitalization – [\[PDF:305k\]](#)
- Appendix Eight: Section 3 – [\[PDF:2.1MB\]](#)
- Appendix Nine: Green Streets – [\[PDF:130k\]](#)

<https://www.iowaeda.com/cdbg/management-guide/>

General Procurement Standards

CDBG recipients (led by grant administrator) must:

- » **Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders**
- » **Be responsible to handle and resolve disputes related to procurement actions**

Conflicts of Interest

- » **Black's Law Dictionary defines a "conflict of interest" as:**
 - "A real or seeming incompatibility between a person's private interests and his or her public or fiduciary duties"

- » **City/County needs a written standards of conduct – specific to awarding contracts**

Conflicts of Interest - continued

» **Prohibited conflicts:**

- Persons with CDBG responsibilities, decision-making power or information may NOT:
 - Obtain a financial (or any!) interest or tangible benefit from a contract
 - Solicit nor accept favors/anything of monetary value
 - Applies to family members and business ties

» **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
- Mayor / City Clerk cannot sit on bid committee if husband / wife / in-law, etc. is bidding on a construction contract
- City employee with a second job running a business that receives a CDBG award cannot in any way administer that award

Best Cost

- » **Avoid unnecessary or duplicative items**
- » **Strive for economical purchases**
- » **Value engineering**

Responsible Contractors

» **Recipient must award contracts only to responsible contractors able to successfully perform under contract.**

Consider...

- Integrity
- Compliance with public policy
- Record of past performance
- Financial and technical resources

Responsible Contractors - continued

- » **Must check the Federal list of debarred contractors on SAM.gov**
 - What is a “contractor”?
- » **Need to search the “Excluded Parties List System,” not just an active SAM.gov account.**
- » **Include screenshot *with date and time stamp* in the contractor clearance form**
 - Be sure to check PRIOR to awarding contracts!

Competition

- » **Must allow for full and open competition (templates for RFP/RFQ and TA bid specs cannot be provided by administrators, refer recipient to IEDA 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**

Procurement Methods

- » **New as of 2022...**
- » **Start with the question, “What am I procuring?”**
 - » **Construction?**
 - » **Professional services?**
 - » **Other goods and services?**

Procurement Methods

» Construction – Buildings and Utilities

» Iowa Code Chapter 26

» <https://www.legis.iowa.gov/docs/code/2022/26.pdf>

» Different thresholds depending upon type of project and type of recipient

» If below a given threshold, follow “other general goods and services” procedures

» You still need to publish the bid notice in a newspaper of general circulation

Procurement Methods

- » **All Professional Services** – (A/E, TA, Lead Inspector)
 - » Formal competitive selection
 - » More than one offer submitted
 - » Fixed price or cost-reimbursement contract

- » “RFQ” / “RFP” rather than sealed bids

- » **You still need to publish the RFQ/RFP notice in a newspaper of general circulation**

Procurement Methods

- » **All Other Goods and Services**
 - » Not relevant to “traditional” CDBG projects
 - » Consider CV microenterprise/food banks, or the new Neighborhood Revitalization program
 - » Determine anticipated *aggregate total purchase cost*, not individual line-item cost

- » **Any service, regardless of price, requires a contract with CDBG provisions.**

- » **Goods and materials only, if less than \$5,000, do not require a contract**

Procurement Methods

1. **Small Purchase Method (less than \$5,000)**
2. **Simple Purchase Method (between \$5,000 - \$50,000)**
3. **Sealed Bids Method (greater than \$50,000)**
 - *(Remember– all construction procurement follows Iowa Code Chap.26 – Public Construction Bidding, while still publishing the bid notice in a newspaper)*
4. **Competitive Proposal Method (greater than \$50,000)**
 - **Also used for professional A/E or technical services at any price**

Procurement Methods:

1. Small Purchase

- » **Used for non-construction and non-A/E or professional services purchasing**
- » **Must be less than \$5,000 (and does not exceed \$15,000 for multiyear contracts)**
- » **Subrecipient does not need to solicit competitive quotations, must distribute procurement equitably**
- » **Quotes not necessary if subrecipient considers price reasonable**

Procurement Methods:

2. Simple Purchase

- » **Used for non-construction and non-A/E or professional services purchasing**
- » **Annual value exceeds \$5,000 but less than \$50,000 (and does not exceed \$150,000 for multiyear contracts)**
- » **May use informal selection process – solicit a minimum 3 quotes from qualified sources**

Procurement Methods:

3. Competitive Sealed Bid

- » **Used for non-construction, non-A/E or technical service contracts**
- » **Est. annual value exceeds \$50,000 and exceeds \$150,000 for multi-year contracts.**
- » **Requires detailed bid specs, formal advertising/publishing, with an award based on a lump sum or fixed unit bid price.**
- » **Awarded to firm that is most responsible bidder who is also the most responsive to the bid request**

Procurement Methods:

3. Competitive Sealed Bid

- » **Bids publicly solicited from adequate suppliers with sufficient response time**
- » **Bid specs must define items – be specific but not limiting**
- » **Bids opened publicly where they said they would be**
- » **Fixed price contract to lowest responsive, responsible bidder**
- » **Any/all bids may be rejected with a sound, documented reason**

Procurement Methods:

4. Competitive Proposals Method

- » **Used for A/E and technical services, with more than one source submitting an offer, regardless of contract price.**
- » **Also used for other services where est. annual value exceeds \$50,000 and exceeds \$150,000 for multi-year contracts.**
- » **Must utilize a formal competitive selection process (publishing with weighted evaluation criteria included)**
- » **Either a fixed-price or not-to-exceed type contract is awarded.**

Procurement Methods:

4. Competitive Proposals Method

- » **Publish! Identify all evaluation factors and their relative importance. Consider all responses.**
- » **Solicit from an adequate number of qualified sources**
- » **Written method for technical evaluations and selections**
- » **Award to most responsible with most advantageous response (consider price and other factors)**

Procurement Methods:

4. Competitive Proposals Method

- » **For Architect & Engineering contracts, utilize qualifications-based procurement**
 - Evaluate qualifications rather than price or other criteria
 - Most qualified is selected, subject to price negotiation
 - CANNOT be used on other professional services!

Procurement Methods: Competitive Proposals – RFQ

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

Procurement Methods: RFQ Negotiation Procedure

- 1. Negotiate with top ranked firm, including a 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**

Procurement Methods: Competitive Proposals – RFP

for Admin, TA and Misc. services

- » **Must clearly and accurately state technical requirements and scoring criteria for goods and services required.**
- » **Grantee must publish the RFP in a newspaper, 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.**

Procurement Methods: Competitive Proposals – RFP (continued)

- » **Grantee must conduct a technical evaluation and score the criteria of the submitted proposals.**
- » **Price may be included as one of the review criteria.**
- » **The successful offeror must clearly be the most advantageous source of the goods and services (responsive and responsible)**

Procurement Methods: Noncompetitive Procurement

- » **Also called “sole source”**
- » **Offer is only possible from one source**
- » **This method may be used only under VERY limited circumstances:**
 - Emergency
 - Express authorization from HUD or IEDA
- » **Document everything!**

Procurement Methods: Single-Source Provider Method

- » So, what is “single-source”?
- » Offer/bids solicited from multiple sources but only one legitimate response, or competition from multiple sources is deemed inadequate.
- » Requires approval from IEDA prior to signing contract.

Targeted Small Businesses Minority, Disabled, and Women-Owned Firms

- » **Recipients must make the 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, quantities, and/or delivery schedules
 - Use Minority Business Development Agency, Small Business Administration, and/or IEDA Targeted Small Business program
 - Require prime contractors to take same affirmative steps listed above

Recycled Content and Products

- » **When appropriate, specs should include requirements for the use of recycled/recovered materials and products.**
- » **Specs should not restrict use of alternative/recovered/recycled materials unless you can document that they will impede the intended use of the product.**

Cost Analysis and Contract Price

- » **Recipient must perform a cost or price analysis with each procurement, including contract modifications.**
- » **At a minimum, Recipient must make independent estimates before receiving bids/proposals.**
- » **Recipient must negotiate profit as a separate element of the contract.**
- » **Costs must be for allowable uses under 2 CFR 200.402-406 .**
- » **Cost plus a percentage of cost is not allowed.**

Review of Procurement Documents & System

- » **Recipient must make procurement documents available:**
 - upon IEDA request,
 - when a noncompetitive process has taken place, or
 - when procurement specifies a “brand name” product.

- » **Self-certification of procurement (Required Uploads)**

- » **IEDA certification (monitoring)**

Bonding

- » **Bid Bonds**
- » **Performance Bonds**
- » **Payment Bonds**

Bonding: Bid Bonds

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

Bonding: Performance Bonds

- » **Used to ensure completion of work**
- » **Must equal 100% of the contract price**
- » **Serves to protect the Recipient to make sure the work is done correctly and in accordance with the contract.**

Bonding: Payment Bonds

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

Bonding

- » Recipient pay petition IEDA to accept their own bonding policy
- » Recipients are expected to comply with all state requirements regarding bonding for public improvement projects:
<https://www.legis.iowa.gov/docs/code/2019/573.pdf>
- » Recipients should consult with legal counsel to determine how state requirements may impact their CDBG project.

Contract Provisions

- » **CDBG contract language required for all contracts:**
- » **Access and Maintenance of Records**
 - Three years after the closeout between HUD and IEDA
- » **Civil Rights (incl. Section 3, as amended)**
- » **Termination Clause**
 - Not just a copy/paste that one is needed, but an actual termination clause specific to the contract
- » **Restrictions on Lobbying**
- » **Lead-Safe Housing Regulations (as applicable)**
- » **Recycled Materials**
- » **Regulation Pertaining to Reporting**

Contract Provisions – cont.

Construction contracts greater than \$2,000

- » **Federal Labor Standards (verbatim), which includes:**
 - » **Davis-Bacon and related acts (Incl. current wage rates)**
 - » **Contract Work Hours and Safety Standards Act**
 - » **Copeland Anti-kickback Act**
-
- » **Note: Housing Rehab/Upper Story/Housing Conversion contracts of less than 8 units excluded from above.**

Contract Provisions –

All Contracts greater than \$10,000

- » **Federal Executive Orders 11246 and 11375**
- » Provides that no one be discriminated in employment

Contract Provisions –

All Contracts > \$100,000

- » **Clean Air and Water Acts**
- » Section 306 of the Clean Air Acts
- » Section 508 of the Clean Water Acts
- » Executive Order 11738 (Administration of the above)

DOCUMENTING COMPLIANCE

Next Steps & Resources

Certification of Compliance

- » The Certification of Compliance Form became effective with all FY 2016 awarded projects and has been updated
- » Find it in Appendix 2 of the Management Guide (in the Procurement section)
- » It is required to be uploaded into IowaGrants – the Required Uploads section, prior to the 1st construction claim, and applies to ALL procurement for the specified award

Documenting Compliance

Grantees / administrators must document...

- » **A description of the procurement policies and procedures used / adopted 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 local government's procurement records are followed (verification from City attorney) as necessary**

- » **Documentation of contracted work, including:**
 - Copies of award letters
 - Inspection reports
 - Contract amendments
 - Payment log
 - Monitoring letter/findings

Resources

- » **CDBG Management Guide, Chapter 2 and Appendix 2**
- » <https://www.iowaeda.com/cdbg/management-guide/>
- » **IEDA website with recorded trainings and slides**
- » <https://www.iowaeda.com/cdbg/training-resources/>

Questions?

sarah.plowman@iowaeda.com

515-348-6213