



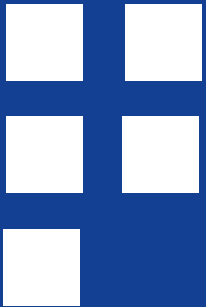
PROCUREMENT with Federal Funds

COURSE OBJECTIVES



- Debarment Requirements
- Procurement Solicitations
- Bid Solicitation
- Conflicts Of Interest
- Record Keeping
- Other Requirements

Debarment Requirements



Debarred Contractors



■ Debarment Requirements

- Administrative requirements in both 24 CFR Part 84 and 24 CFR Part 85 prohibit the use of HOME funds to directly or indirectly employ, award contracts to, or otherwise engage the services of any service provider, contractor, or vendor who has been debarred, suspended, or designated as ineligible.

Debarred Contractors



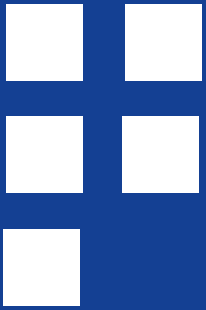
- **Make sure that:**
 - all trade contractors and/or all subcontractors are cleared through GSA's Excluded Parties List System (EPLS)
 - under both their business or 'doing business as' (DBA) names **and** under the individual names of the owners and/or principals associated with the business
 - Make sure your files are well documented!

Contractor Status



- **Can't use debarred, suspended, ineligible contractors**
 - www.epls.gov
 - www.sam.gov
 - *Visiting EPLS will refer you to SAM!*
- **Make sure your contractor is eligible to do business in Texas**
 - Visit the Secretary of State website:
<http://www.sos.state.tx.us/corp/index.shtml>

Procurement Requirements



Procurement



- **Federal**
 - 24 CFR Part 84
 - 24 CFR Part 85
- **State (Local Government Code)**
 - Chapter 252 for Municipalities
 - Chapter 262 for Counties
 - Chapter 271 for Purchasing and Contracting Authority
 - Chapter 392 for Housing Authorities
 - Government Code, Chapter 2254, Professional Services Procurement Act
 - Government Code, Chapter 2253, Bonding

Procurement



- **Procurement is the process of obtaining any one of the following:**
 - Property
 - Supplies/Equipment
 - Services
- **Common services include:**
 - Employment
 - Construction
 - Engineering/Architecture, etc.
 - Legal

Procurement



- **Proper Procurement ensures:**
 - Purchases avoid conflict of interest
 - Open and free competition
 - Affirmative steps
 - Minority and women owned businesses
 - Section 3 opportunities
 - Appropriate pricing methods are used
 - Clear and uniform information is provided
 - Selected bidder is qualified and capable to complete project

- **Elements of Procurement**

- Provide maximum open and free competition
- Apply regardless of procurement through sealed bid or negotiations and without regard for dollar value
- No geographic preference unless federal statutes mandate
- Must have method for evaluating proposals
- Use competitive proposal procedures for qualification based procurement

Procurement



- **Procurement standards cover:**
 - Supplies
 - Equipment
 - Construction
 - Services

- **Things to consider**
 - Procurement must be properly authorized and approved
 - Avoid purchase of unnecessary or duplicate items
 - Analyze when lease versus purchase is more appropriate
 - Procure from labor surplus areas and intergovernmental purchase agreement

Written Procurement Procedures



- **Written procurement procedures must address:**
 - HUB outreach and participation
 - Debarment requirements
 - Conflicts of interest during the procurement process
 - Nondiscrimination/Equal Opportunity practices
 - Section 3 and Minority/Women Owned Business Enterprises opportunities
 - Controls for cost effectiveness
 - The process(es) to solicit goods and services (sealed bid and negotiation processes)
 - Bonding requirements

Procedural Requirements



- **Number 1.**
 - Clear and accurate description of the technical requirements for the materials, product or service
 - If competitive, not include items that unduly restrict competition
 - Qualitative nature of materials
 - Minimum essential characteristics and standards to conform

Procurement Requirements



■ Number 2.

- Identify ALL requirements to be fulfilled and other factors used in evaluating bids
 - Example: If a bond is required, bid should say that

- Ensure:
 - Prequalified list is current and allows for free and open competition
 - Do not preclude bidders from solicitation period

Procurement Procedures



- **Standard methods of procurement:**
 - Small Purchase
 - Sealed Bid
 - Competitive Proposals
 - Non Competitive Proposals
 - Local Government's Procurement Process

Procurement Methods



- **Small Purchases**

- Single purchase not to exceed \$10,000 in aggregate
- Generally no formal advertising or contracts
- Must get price and rate quotes from at least 3 qualified contractors
- Construction contracts over \$2,000 must follow prevailing wage and labor standards

Small Purchase Method



- **For Small Purchase procurements (i.e., those with a value less than \$100,000 or any lower state or local thresholds), keep a record of:**
 - Description of the materials, supplies, or equipment to be purchased (including drawings and specifications, if applicable);
 - The name and title of the person who obtained price quotes;
 - The date(s) price quotes were obtained;
 - The source of all price quotes (name of firm, name and title of person contacted, price quoted);
 - If written or faxed quotes are obtained, the actual quotes need to be retained;
 - If telephone quotes are obtained, a record of the telephone solicitation needs to be retained;
 - The source selected for the procurement;
 - Purchase requisition/Purchase Order;
 - Price paid and source of funds; and
 - Date materials, supplies or equipment received

Small Purchase Method



- **Maintain:**
 - Rationale for choosing method
 - Documentation of phone and verbal solicitations
 - Steps taken to solicit minority/women-owned businesses
 - Written record of evaluation for selection
 - Professional qualifications
 - Copy of contract and any change orders
 - Comparable basis for cost or price

Competitive Sealed Bids



- **Competitive sealed bid characteristics**
 - Professional services
 - Federal funds over \$10,000
 - Maintenance, repairs or replacement of water, electric light or public works or other public works
 - Improvements, repairs and maintenance of any kind by municipality through own employees.
 - Particular types, models or new equipment apparatus or vehicles
 - Insurance or surety
 - Bonds may be required

Competitive Proposals



- **Conditions must be present**
 - Complete adequate and realistic specifications or purchase description
 - Two or more suppliers willing to compete
 - Lends itself to a firm-fixed-price contract and selection based on price

- **Competitive Sealed Bids must be used for excepted categories when \$100,000 or more and professional services when less than \$100,000**

Sealed Bid Method



- **For procurements that are over the “small purchase” threshold and require sealed bidding (e.g., construction projects), keep a records that includes:**
 - Invitation to bid;
 - Affidavit of publication from the newspaper (legal section);
 - Copy of the complete bid package, including
 - Plans and specifications;
 - General conditions and special conditions;
 - Section 3 requirements;
 - Equal Opportunity submissions;
 - Bid bond requirements, including performance and payment bond requirements;
 - Wage rates [if applicable]; and
 - Submission requirements.

Sealed Bid Method



- **Notes of pre-bid conference should include:**
 - Questions received from bidders (if any) and how the agency responded;
 - Amendments to bidding documents (if any);
 - List of firms/individuals who filed bids;
 - Record of the bid opening (including bids received, bid amount, responsive and nonresponsive bidders);
 - Non-collusive affidavits (if applicable) in which bidders certify that the bid is genuine and not collusive or sham and that the bid was not assembled in coordination with any other organization in an attempt to fix the price of the work;

Sealed Bid Method



- **Notes of pre-bid conference should include (cont'd):**
 - Staff notes on responsive bidders' reference checks;
 - Copy of staff memo recommending selection and contract award;
 - Official action awarding contract (resolution when applicable);
 - Copy of contract awarded; and
 - Information on compensation approach, including documentation about how the compensation structure was selected.

Competitive Bid Contracts



Two Types

1. Lump Sum Contract or
2. Unit Price Contract

Lump Sum Contracts



- **Lump Sum Contract Characteristics**
 - Perform work to plans and specifications
 - Specified sum of money
 - Plans are complete in detail before quotes
 - Change orders can be an issue

Unit Price Contract



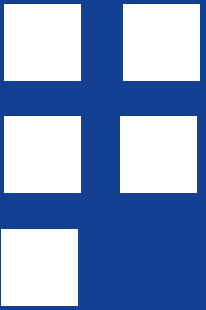
- **Unit Price Contract Characteristics**
 - Compensation for each unit constructed
 - Estimated quantities are in bids for comparison
 - Variation allowed with limited change orders
 - Detailed plans and specs per unit needed before bidding

Non Competitive Proposals



- **Noncompetitive proposals ARE RARE, but when they occur, keep additional documentation that:**
 - The item or service procured is available only from a single source; or
 - Public exigency or an emergency will not permit a competitive procurement; or
 - After soliciting a number of sources, a determination is made that competition is inadequate; AND
 - The awarding agency (in this case, TDHCA) approves a noncompetitive procurement.
 - The agency also must perform a cost analysis to determine that the price to be paid is reasonable.

Bid Solicitation



Solicit Responses



- **Best Practice**

- Publish in one (or 2 if possible) newspapers
- Appear 2 times on different days (or in 2 different newspapers)
- 10 days prior to opening of bids
- Posted in City Hall/ County Courthouse / Main Office

Bids & Proposals



- **What to Include in the Published Bid/Proposal**
 - A clear and concise scope of work
 - Date the Bid/Proposal will open and close
 - Timeline for the completion of required tasks
 - Description of the criteria to be used in the evaluation of proposals received (include in your written procurement procedures)
 - Instructions for obtaining and submitting the Bid/Proposal packet

Bids & Proposals



- **What to Include in the Bid/Proposal Packet**
 - A cover letter with description of the activity, a summary of the requirements and scope of work, and a definition of conflict of interest
 - A list of items required to be included in or submitted with proposals
 - A sample contract identifying required terms and conditions

Bids & Proposals



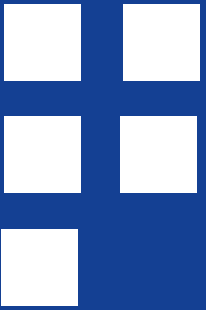
- **Best Practices in Bid/Proposal Docs:**
 - A clear description of the work to be performed and necessary technical skills
 - When describing work to be done, specify “brand name or equal”
 - Refer to dimensions using the metric system
 - State preferences for products and services that conserve natural resources, are energy efficient, and protect the environment

Bids & Proposals



- **Be clear about:**
 - Bidder requirements and items to be submitted with bid or proposal packets
 - How bids and proposals will be evaluated
 - Notification process for accepted and declined bids
 - Selection criteria, such as:
 - Has the bidder demonstrated they can complete the job?
 - Has the bidder demonstrated that he/she has the kind of integrity and reliability?
 - Has the bidder submitted a bid/proposal that fully conforms with the IFB/RFP?

Conflict of Interest



Conflict Occurs



- When an employee, officer or agent; any member of family; partner or an organization employs or is about to employ any of the above, has a financial or other interest in firm selected
 - ***Cannot participate in selection, or in award or administration of a contract if a conflict of interest, real or apparent, would be involved!***

Conflict of Interest



- **Two types of conflicts of interest**
 - Procurement
 - Non-procurement

- ***We will focus on procurement related conflicts of interest***

Procurement Conflict of Interest



- **Procurement Conflict of Interest**
 - Are governed by 24 CFR Part 85 or 24 CFR Part 84, Program Regulations, NOFAs, state/local law, and Administrator procurement policies.

- **Non Procurement Conflict of Interest**
 - Are governed by Program Regulations, Program Specific Contracts, NOFAs, state/local law, and Administrator conflict of interest policies.

Procurement Conflict of Interest



- **Procurement Conflict of Interest**
 - Note that even ***apparent conflicts of interest are prohibited.***
 - There are no exceptions for procurement conflicts of interest.
 - A request for a waiver must be sent to TDHCA, who will confer with HUD.

Procurement Conflict of Interest



- **Procurement COI Example**

- The City of Springfield hired ABC Associates to complete an application for the Homeowner Rehabilitation Assistance program funded with TDHCA HOME funds
- Springfield used their own funds to pay for application preparation.
- ABC Associates completes the application on behalf of Springfield and is later procured to administer the program on behalf of Springfield.

- *Is this a conflict of interest under Part 85?*

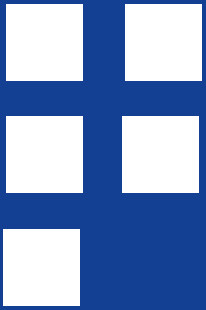
Procurement Conflict of Interest



■ Procurement COI Example

- Answer: Yes. ABC Associates was acting as an agent for Springfield when they prepared the application and they have a financial interest as the firm hired to administer the HRA program. ***A conflict would still exist even if ABC Associates completed the application free of charge.***
- What's next?
 - Springfield may request a waiver of the prohibition against conflicts of interest in procurement, however regulatory waivers regarding conflicts of interest are not routinely granted and the review process is often lengthy.

Recordkeeping



Importance of Record Keeping



- **Administrators need to understand:**
 - What information to keep and why
 - When to collect information
 - How to acquire, organize and store the information
 - How to report the information
 - How long records must be kept

Importance of Record Keeping



- **Procurement documentation includes:**
 - Selection and evaluation criteria, ***including explanations for why certain criteria were selected***
 - Justification for lack of competition when competitive bids or offers are not obtained
 - Basis for award costs or prices
 - Cost and/or price analyses used in connection with every procurement action which may include:
 - Comparison of price quotations submitted
 - Market prices
 - Discounts available

Importance of Record Keeping



- **Documentation to maintain includes:**
 - Evaluation of reasonableness and allowability
 - Copies of applicable scopes of work [for RFPs] or construction-related activities [for IFBs]
 - Copies of published and/or posted RFPs and IFBs
 - Copies of proposals and bids received
 - Documentation verifying the procurement selection and evaluation process
 - Copies of contracts made with service providers (consultants), Building Contractors, and/or other Subcontractors

Record Retention



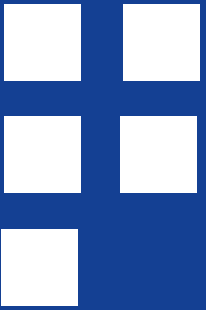
- Length of Retention Period
 - 5 years
- Retention Period
 - Clock starts on date of last expenditure report for applicable grant period
 - Retain for five years from end of that fiscal year

Access To Records



- Access to Records
 - HUD, Comptroller, TDHCA may access records at any time
 - Required to provide citizens with reasonable access
- Storage
 - Easy retrieval and access
- Disposal
 - Ensure confidentiality

TA & Monitoring



TA & Monitoring Activities



- **TDHCA will:**
 - Provide enhanced TA to Administrators related to procurement responsibilities
 - Conduct more in-depth monitoring of procurement in upcoming monitoring visits and desk reviews

- **Check your own compliance:**
 - **EXHIBIT 7-20** Guide for Review of Financial Management
 - **Attachment:** Attachment to Exhibit 7-20
Reviewer's Guide for Financial Management
Review of HOME Participating Jurisdictions (PJs)
 - **EXHIBIT 7-21** Guide for Review of Cost Allowability
 - **EXHIBIT 7-22** Guide for Review of Procurement
 - **EXHIBIT 7-23** Guide for Review of Equipment and Equipment Disposition