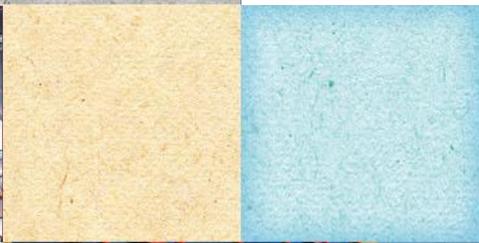




Subrecipient Administrative Training Meeting
NJEDA Office, Trenton, NJ
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Energy Resilience Bank Program (ERB)

Procurement, Contract, and Construction Standards



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Agenda

- Procurement
- Contract Management
- Construction Period
- Compliance: Labor Standards, Affirmative Action, EEO and Section 3

Terminology

- **Subrecipient:** Governmental agencies, non-profit agencies, or private entities which are provided CDBG funds by a grantee (NJEDA) for their use in carrying out agreed-upon, eligible activities.
- **Procurement:** The process of purchasing materials, products, or services. CDBG requires free and open competition, proper documentation of all actions, observation of rules for particular purchase, proper bonds and insurance, and use of small, minority and or women owned business (SWMVBE) to the maximum extent feasible.
- **Contract:** A mutually binding legal relationship obligating the seller (contractor; professional A/E) to furnish the supplies or services (including construction) and the buyer (Subrecipient) to pay for them.
- **Construction:** The implementation of the eligible activity.
- **Compliance:** Labor Standards/Affirmative Action/EEO/Section 3

Procurement

Basics of Procurement for Non-Profit Organizations and Governmental Agencies

- Designed to achieve maximum open and free competition
- When hiring a contractor or procuring professional services, Subrecipients must follow:
 - NJ State regulations and requirements regarding procurement
- Governmental Agency may follow own written procurement procedures if stricter than NJ State Laws.
- Private entities **are not** required to follow NJ State Procurement Law!

Procurement- Overview

- Subrecipients of CDBG funds are responsible for ensuring that goods and services are procured competitively and in accordance with State of NJ procurement rules and regulations.
- Procurement policies should describe how the subrecipient will procure supplies, materials, services and systems/fixtures.
- The policy should assure that all purchases are handled fairly and in a manner that encourages full and open competition.

Procurement- Overview

- 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. HUD auditors may request to audit an Applicants files at any time during the project duration.

Methods of Procurement

- Procurement methods (use based on product/service to be procured)
 1. Procurement by Competitive Proposal (Request for Proposals (RFP's)/Request for Qualifications (RFQ's))
 2. Procurement by Non-competitive Proposals (Sole Source)
 3. Procurement by Sealed Bids (Formal Advertising)

1. Competitive Proposals

(Used for qualification-based procurement such as architectural/engineering professional services)

- RFP's/RFQ's are to be publicized and identify all evaluation factors and their relative importance. Must contain a detailed list of tasks in the proposed scope of work.
- Obtain an adequate number of qualified sources (typically 3) with a method for conducting the technical evaluation of the proposals received for selecting awardees
- Awards are made to the responsible firms whose proposal is most advantageous to the program, with price and other factors considered

What if I already have a Design Professional or Consultant on Board?

- If you are using the CDBG-DR Program funds to pay for their services, then the procurement practices used to hire the professional must have followed the “Procurement by Competitive Proposal” method. Procurement must have been project specific and occurred post Storm.
- Provide all procurement documentation to NJEDA for review
- What if it’s not approved by NJEDA?
 - Subrecipient may use hired professional and pay for services with alternate funding source.
 - Re-bid using Competitive Proposal method

2. Non-competitive Proposals

- Limited use – used only when:
 - After solicitation from a number of sources, competition is determined inadequate
 - Item or service required is available only from a single source
 - The ERB Program authorizes the noncompetitive method.
 - A public emergency is such that the urgency will not permit a delay beyond the time needed to employ one of the other methods described above.
- Subrecipient to obtain/perform an independent construction cost estimate cost analysis verifying proposed cost data

3. Procurement by Sealed Bids (Construction)

- Requires publicly soliciting sealed bids
 - Provide a clear definition of scope of work
 - Publication period
 - Public opening, with recorded minutes
 - Bids and bid tabulation provided to NJEDA
- Fixed-price contract is awarded to the lowest responsible and responsive bidder

Other Considerations

- Excluded Parties (Debarment)
 - May not use debarred, suspended or ineligible contractors or professionals
 - Check [http:// www.sam.gov/portal/public/SAM](http://www.sam.gov/portal/public/SAM) and <http://www.nj.gov/treasury/debarred> prior to signing any contract with contractors or subcontractors
- Use of SWM/BE (Small, Woman, Minority, Veteran Owned Business Enterprises) businesses whenever possible (25% goal)
 - The goal of the CDBG Program is to ensure that small firms along with women and minority owned firms have an equal opportunity to participate in contract opportunities provided by the program.

Independent Cost Estimate

- Subrecipient to obtain/perform an independent construction cost estimate **prior** to receiving bids.
- “independent”- qualified party other than a competitive bidder
- To be used for comparative verification of bids. Approved bid to be within +/-10-15% range of estimate.

Documenting the Procurement Process

- The Subrecipient must document and submit the following to EDA for the project file:
 - Procurement Notice/Bid Advertisement with date and method of publication shown;
 - A copy of the bid package, including specifications and drawings provided;
 - Copies of all bids received and bid tabulation sheet;
 - Resolution(s) to enter into contract and/or any resolutions pertaining to the construction procurement process;
 - A copy of the contract(s) entered into; and
 - A statement from the purchasing official stating their determination of how the contract meets State Procurement Law.

Questions?

Contract Management

Contract Management- NJ State Law

- When contracting with a construction contractor and/or professional for services, Subrecipients must follow:
 - NJ State regulations and requirements regarding contracting
- Governmental Agency may follow own written contracting procedures if stricter than NJ State Contract Law.
- Private entities **are** required to follow NJ State Contract Law!

Common Rules Regarding Contracting

- All services, professional, or construction, paid in whole or in part with CDBG-DR funds, require the **execution of a formal contract.**
- **All contracts** should contain a clear, concise, and detailed description of the:
 - scope of work
 - total cost
 - duration or life of the contract
 - compliance requirements
 - reporting responsibilities

Common Rules (continued)

- All contracts requesting payment for activities not clearly defined in the scope of services may be denied CDBG-DR funding.
- It is the responsibility of the Subrecipient to manage all contracts executed for CDBG-DR funded projects.
- All construction contracts using CDBG-DR funds for payment must pass a cost reasonableness test.
 - Based upon pre-bid independent cost estimate

Common Rules (continued)

- Before the Subrecipient can sign a contract with a proposed contractor or professional service provider, the Subrecipient must ensure that the parties are not on the Federal and State listing of excluded parties for a Federally funded project (Debarred).
- All professional service contracts and construction contracts paid for with CDBG-DR funds must use firms/businesses that are licensed to operate in the State of New Jersey. No grant funds will be released to pay businesses that do not hold this license. Provide copies of BRC's and CRC's (Contractors only).

Forms of Contract

- Professional Services
 - Standard A/E contract template
 - Lump sum or Max Not-to-Exceed
 - Must include all required CDBG-DR Compliance Provisions for Professional Services as defined in the *NJEDA CDBG-DR Administrative Manual*.
 - Fees must be reasonable and justifiable
- Construction Contracts
 - Generic construction contract
 - Firm-fixed price
 - Must include all exhibits included in Appendix 5 of the *NJEDA CDBG-DR Administrative Manual*.
 - Bonding requirements- Payment and Performance

Bonding Requirements

- Bid Bond (with Bid)
 - 10% of total bid price, but not in excess of \$20,000
- Performance Bond (with Contract)
 - 100% of approved bid
- Payment Bond (with Contract)
 - 100% of contract price
- Maintenance Bond (optional)
 - 100% of project costs
 - One (1) or two (2) year(s)

Documents Required to be Included as part of the Construction Contract

1. State of New Jersey Standard Terms and Conditions
2. CDBG Compliance Provisions for Construction Contracts
3. CDBG General Conditions
4. VCA- Voluntary Compliance Agreement
5. Mandatory Contract Language (as outlined in the NJEDA CDBG-DR Administrative Manual, page 53)

Documents the Contractor must Provide with Executed Contract

1. Anti-Lobbying Certification
2. Payment Bond
3. Performance Bond
4. Certificate of Owner's Attorney
5. Certificates of Insurance
6. Contractor Schedule of Values (AIA G703)
7. Anticipated Draw Schedule
8. Drug-Free Workplace Certification (HUD-50070)
9. NJ Business Registration Certificate (BRC)
10. NJ Public Works Contractor Registration Cert. (CRC)

Questions?

Construction Period

Construction Period Activities

- Pre-Construction meeting
- Construction Schedule (updated upon 10% variance)
- Site Inspections and Progress Meetings
- Monthly Requisitions
- Record Drawings (updated on site)
- Change Orders (approval required)
- SWM/VBE Monthly Contract and Subcontract Activity Report

Invoicing

- One per Month (per Project)
- Must include SWM/BE Monthly Contract and Subcontract Activity Report - (include applicable contractor certificates with 1st application only)
- NJEDA will pay the Subrecipient by an ACH electronic transfer using the ACH Form or by check
- Final disbursement shall only be made when the installed system is proven as operable.

Invoicing- Professional Services

- Must match approved contract amount
- Approved/Signed by Subrecipient prior to submission by other party (A/E)
- Must be eligible costs
- Final contract amount will not be paid until all required documents are received by NJEDA

Invoicing- Construction Payment Requisitions

- Required items must be in file (previously submitted)
 - Verification of Prime Contractor and Subcontractor Eligibility
 - Debarment check completed for all contractors and sub-contractors
 - Business Registration (BRC) & Contractor Registration (CRC)
 - Checklist/Tracking sheet items in file

Construction Payment Requisition - Approved Forms

- **AIA G702- *Application and Certificate for Payment***
 - Signed/sealed by Project Architect/Engineer
 - Approved/Signed by Municipality prior to submission
 - 10% Retainage held
- **AIA G703- *Schedule of Values (Continuation Sheet for G702)***
 - Line items matching approved amounts
- Alternate equivalent forms may be used but should be submitted to NJEDA for review prior to 1st submission and use.

Construction Payment Requisition – Required Monthly Submitted Back-up

- **SWMVBE Monthly Contract and Subcontract Activity Report**
 - include with each monthly construction payment requisition
 - include applicable contractor certificates with 1st application only
- Partial Release of Liens
- Periodic NJEDA site inspections with photo documentation
- Photo documentation by owner rep. showing invoiced items progress/completeness for months when NJEDA inspector not on site

Construction Payment Requisitions- Labor Compliance

- Submitted to Labor Compliance Officer- Lorena Young
 - Certified Payrolls (weekly, originals)
 - Affirmative Action Manning Report (electronic submission)
 - Monthly Section 3 Report

Disbursement

- NJEDA will pay the Subrecipient by an ACH electronic transfer using the ACH Form submitted monthly.
- All payments made on a pro-rated basis with other funding sources.
- Payment confirmation (from Subrecipient to professional or contractor) must be received prior to next payment processing

Questions?

Thank you