

**PROCUREMENT AND SUBCONTRACTS****I . PURPOSE**

This chapter explains required procedures that must be followed when purchasing goods and services. The procedures require the procurement of goods and services at competitive prices while encouraging patronage of minority and women's businesses in order to maximize the best use of funds and to benefit the county and the community. The procurement and subcontracting requirements are applicable for all federal funding sources.

**II . SUB-RECIPIENT: DEVELOPMENT OF POLICIES AND PROCEDURES**

- Sub-recipients must develop and comply with their own written procurement policies and procedures which must, at a minimum, follow sound business practices. Federally funded sub-recipients' policies must also comply with 24 CFR Part 84 (for nonprofits, institutions of higher education, and hospitals) or 24 CFR Part 85 as (for state and local governments). Sub-recipients must be guided by those policies and procedures for all purchases.
- Sub-recipients must maintain documentation that purchases were made in compliance with applicable policies and procedures.
- Prior to taking any action on construction or physical improvement activities, sub-recipients are required to contact their HCD Project Manager to schedule a meeting to receive compliance information and to determine the appropriate procurement procedures to be followed.

**A . DEFINITIONS**

1. Agreement: Referred to as "Agreement" or "Contract" by and between Miami-Dade County and the Awardee (also referred to as the agency or sub-recipient).
2. Procurement: This is when sub-recipients purchase supplies, equipment, construction services, or incidental or routine administrative and support services such as surveys, consultant studies, legal, audit, and accounting. Sub-recipients must follow the noted federal procurement regulations when these types of costs will be charged to federal funds.

Note: When sub-recipients engage parties to carry out any eligible substantive programmatic service as described in the prime contract with DHCD, U.S. HUD does not define this as procurement. Thus, federal procurement regulations do not have to be followed; sub-recipients are to follow their own written procurement policies, which must follow sound business practices.

3. Subcontractor or Sub-consultant: Any individual or firm hired on a contractual basis by the sub-recipient to perform work or functions cited in the Scope of Work/Action Step Format of its contract with Miami-Dade County.
4. Sub-contract: This is a binding agreement between the sub-recipient and any party in which the sub-recipient agrees for compensation to perform services or provide goods according to the stipulations with the prime contract between Miami-Dade County and the sub-recipient.

All federally funded sub-recipients are required to follow applicable federal procurement regulations when the purpose of the subcontract is to engage parties to perform incidental or routine administrative and support services e.g., surveys, consultant studies, audits, accounting services) and for the purchase of supplies or equipment. These sub-recipients do not require DHCD's prior approval if the approved budget adequately explains and justifies these cost items. A copy of these subcontracts must accompany the first invoices submitted to DHCD for payment.

### **I I I . PROCUREMENT STANDARDS**

#### **A . FEDERALLY FUNDED CONTRACTS**

1. In the expenditure of federal funds, non-profit organizations, institutions of higher education and hospitals must comply with 24 CFR Part 84.
2. State and local governments must comply with 24 CFR Part 85.

NOTE: All sub-recipients that engage in, procure, or make loans for construction work must submit all proposed Solicitation Notices, Invitations for Bids, and Requests for Proposals to DHCD for written approval prior to publication.

#### **B . BUDGETED PURCHASES**

The Awardee's/Sub-recipient's approved contract budget constitutes DHCD's prior approval for the purchase of goods and services that are within the limits and amounts in the detailed budget. The exception is that subcontractors that will carry out eligible substantive programmatic services require DHCD's written prior approval.

#### **C . UNBUDGETED PURCHASES**

For intended purchases that are not included or not sufficiently detailed in the sub-recipient's approved contract budget, sub-recipients must submit a written request to DHCD for approval prior to commitment for expenditure. The request must include the following:

1. A detailed description of the intended purchase.
2. A justification of need for the purchase.
3. A completely revised budget that includes the purchase price and description of the item, along with a written justification of need.

#### D. SUBCONTRACTS AND ASSIGNMENTS

In accordance with the written agreement, all sub-recipients must adhere to the following terms:

1. Obtain written approval from DHCD prior to undertaking the engagement or execution of any subcontract(s) or agreement assignments where federal funds will be used to pay for goods or services.
2. Submit all proposed agreement documents to DHCD at least thirty-days prior to the start date of the agreement.
3. Ensure that all subcontracts and assignments result from an open competitive bid process generating a minimum of three bids.
4. Submit a written description of the competitive process to DHCD along with verification of approval by the Board of Directors (copy of organization's Board Resolution).
5. In such circumstances that open competitive bids are not feasible or that a minimum of three bids are unobtainable, permission to use other methods of award must be requested in writing and approved by DHCD prior to the assignment or award of subcontract.
6. All subcontracts and assignments must contain, a minimum of the following elements:
  - a. The full, correct legal name of the party.
  - b. A description of the activities to be performed.
  - c. Time of performance.
  - d. Method of payment (based on unit cost, service cost/percentage completed, lump sum upon completion, etc.)
  - e. Maximum compensation.
  - f. Insurance requirements, as applicable.
  - g. Termination.
7. All subcontracts and assignments **must** contain the following provisions:

- Incorporate a provision requiring compliance with all applicable regulatory and other requirements of the agreement (between the Awardee and the County) and with any conditions of approval that the County or DHCD deem necessary
  - Incorporate the language of the "Certification Regarding Lobbying"
  - Include language stating that the Subcontractor understands and agrees that the County is not a party to the subcontract and has no obligation to the subcontractor
  - Include audit requirements as detailed in the Agreement (between the Awardee and the County)
  - Include record-keeping requirements as detailed in the Agreement
8. All consultant subcontracts and assignments must contain this provision:
- The Agency is not responsible for any insurance or other fringe benefits (e.g., social security, income tax withholdings, retirement or leave benefits) for the Consultant or employees of the Consultant. The Consultant assumes full responsibility for the provision of all insurance and fringe benefits for himself or herself and employees retained by the Consultant in carrying out the Scope of Services provided in this subcontract.
9. A subcontract model (Attachment 15A) is included in this chapter for use when engaging consultants (except auditors) unless contractors want to use their own forms. In this case, their forms must contain, at a minimum, all the terms and conditions listed in this model. The subcontract attachment entitled "Certification Regarding Lobbying" (Attachment 15B) must be signed, dated, and made a part of the subcontract when the consultant is paid with federal funds.
10. The sub-contract form (Attachment 15C), to be used when engaging auditors, is included in this chapter. **It is a required form.** The subcontract attachment must be signed and dated and made a part of the subcontract when the auditor is paid with federal funds.

#### IV. PAYMENT OF SUBCONTRACTS

- All subcontracts are subject to DHCD's review prior to payment. Invoices will be rejected and payment will not be made when the relevant subcontract fails to meet minimum requirements. Only when the subcontract is corrected will invoices be approved for payment.

- If at any time it is determined that required procurement standards have not been adhered to or the sub-recipient/contractor has failed to maintain adequate documentation of the procurement process, DHCD may refuse to make payment or may require a refund if the cost has already been paid.

## V. FEDERAL PROCUREMENT RULES

### 1. Overview

- While sub-recipients can be chosen using a process determined by the sub-recipient, all sub-contractors must be procured competitively
- Sub-recipients 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
  - Non-profits, institutions of higher education and hospitals -- 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, HOME, or ESG funds should be aware of state and/or local laws that may affect procurement policies.
  - In cases where state or local law is stricter than federal regulations (such as defining a lower monetary limit for using small purchases), the sub-recipient must follow the state or local laws.
- These entities must adopt procurement policies that describe how the sub-recipient will procure supplies, materials, services equipment. The policy is intended to assure that all purchases are handled fairly and in a manner that will encourage full and open competition.
- The entity must 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 sub-recipient 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

- Have a quality assurance system that helps the sub-recipient get what it pays for
- ☐ Sub-recipients must maintain records that are detailed enough to show the history of each procurement. This record keeping is necessary to enable the entity to demonstrate that it has followed its procurement policy. It can also be very important in the event of a protest against a procurement decision. As a minimum, records must clearly show how the entity:
  - executed price sampling for small purchases
  - selected the method of procurement and the type of contract to be used
  - determined which bids or proposals to accept and which to reject; and
  - established the basis for the contract cost or price
- ☐ Sub-recipients may not enter into contracts with persons or firms who are named on the General Services Administration (GSA) list of contractors excluded from federal programs at <https://www.epls.gov>

## 2. Procurement Methods

Federal regulations have defined four procurement methods for use by sub-recipients. This section summarizes the four methods and describes when each might be most appropriate.

### A. The Small Purchase Method

- ☐ The small purchase method (also known as the "streamlined method") may be used for procurements of \$100,000 or less under Federal requirements. Miami-Dade County requirements are tiered beginning at purchases of \$10,000 or less. Such purchases might include materials and supplies or fees for professional services, such as appraisal, testing or architectural/engineering services.
  - ☐ In summary, when using the small purchase method:
    - at least four competitive quotes are solicited by telephone or in writing, and
    - sub-recipients must select the most advantageous offer and use purchase orders or petty cash funds to make the purchase
  - ☐ Purchases may be limited even further by the sub-recipients procurement policy. For example, some sub-recipients limit the amount of a single purchase paid for from petty cash to a much smaller amount, generally under \$250.
1. Making several separate small purchases from the same vendor in order to stay under the dollar limitation is not permitted.  
If the sub-recipient anticipates a continuing need for

services or supplies, it should use the sealed bid or RFP method rather than a series of smaller purchases.

- Using the small purchase procedures does not eliminate the requirement for the sub-recipient to use competition. The sub-recipient must try to obtain offers from at least three sources.
- If a sub-recipient is unable to find three sources, it must keep a record of the steps taken to attempt to find these sources.
- Telephone solicitations are not permitted.
- For each purchase, the sub-recipient must explain why the accepted price is reasonable. Ways to show that the price is reasonable include purchasing from the source that offered the lowest price or comparing the offered price to catalog prices and recent purchases of similar goods or services.
- A written record of the purchase must be maintained, whether the sub-recipient uses a purchase order (the preferred method) or funds from petty cash.

B. The Sealed Bid Method

- The preferred method to procure construction contracts and to purchase equipment and supplies is the sealed bid method.
- The sealed bid method works best when:
  - the sub-recipient's needs and requirements can be clearly specified
  - enough contractors and vendors are available to provide competition; and
  - price is the primary selection factor
- Under the sealed bid method, the sub-recipient:
  - defines in a written invitation for bids (IFB) the specific items or services needed, any requirements that will apply to the contract and instructions for preparing and submitting a bid;
  - publicly solicits bids and gives contractors enough time (generally 30 days) to develop their bids prior to a public bid opening;
  - publicly opens the bids and announces all bid prices and the apparent low bidder;
  - reviews the low bid in detail to make sure that it is a responsive bid from a responsible bidder; and
  - awards a firm, fixed-price contract to the winning bidder.

- ❑ The "heart" of the IFB is the statement of work (SOW) which tells prospective bidders what the sub-recipient expects in terms of the quantity and quality of the product to be delivered, and the delivery schedule.
- ❑ For construction contracts, the statement of work includes the plans, specifications, drawings, and other instructions provided by the sub-recipient's design professionals.
- ❑ The sub-recipient should provide a format for bidders that requires a sufficient cost breakdown for the sub-recipient to:
  1. evaluate whether the bid is realistic, and
  2. separately cost optional items that could be deleted if bids exceed the available funding.
- ❑ In addition to inviting bids from all known interested contractors, the sub-recipient should advertise for bids in newspapers and trade journals, and place notices in public places.
  - The bid process, from the advertisement to the actual bid opening, must be an open process.
  - The sub-recipient must ensure that every interested bidder has equal access to information and receives equal consideration.
- ❑ The sub-recipient's procurement policy must explain what the sub-recipient will do if only one bid is received. The sub-recipient may:
  - request HUD approval to accept the bid received
  - convert the procurement to a non-competitive procurement by following the procedures described below
  - cancel the procurement; or
  - re-advertise the IFB and set a new bid opening date. Any bidder who responded may submit a new bid or let the original bid remain in effect.
- ❑ Under the sealed bid method, the sub-recipient awards the contract to the "responsible bidder" with the lowest "responsive bid."
  - Responsible contractors have the ability to perform the work (both technically and financially) and have a satisfactory record of integrity and past performance.
  - A responsive bid conforms precisely to the requirements in the IFB. Under the IFB process, the contractor may not propose to change the contract requirements in any significant way.



### C. The Request for Proposals Method

- The competitive request for proposals (RFP) method is preferred for professional services.
- The RFP method works best when the sub-recipient is looking for alternative approaches (such as alternative designs for a specific housing site) or when the experience and services offered by prospective applicants are to be evaluated along with the price (such as in the selection of an architect or engineer services).
- The chief advantage of the RFP method (and the main difference from the sealed bid method) is that, once proposals are received, the sub-recipient is free to negotiate with one or more applicants to arrive at the most advantageous price.
- Under the RFP method, the recipient:
  - announces and then issues an RFP that describes the specific product(s) or services that are needed, any requirements that will apply to the contract, instructions for preparing and submitting a proposal and the evaluation factors that will be used to rate and rank proposals;
  - publicly solicits proposals and gives offerors enough time (generally 30 days) to develop their proposals;
  - privately opens the proposals, reviews and compares them against the evaluation factors and determines which proposals are in the competitive range;
  - negotiates with applicants in the competitive ranges and gives them the opportunity to submit a best-and-final offer;
  - awards a contract to the responsible firm whose offer is most advantageous to the sub-recipient.
- Whether the procurement is for construction or services, the RFP method is generally used when factors other than cost are an important part of selecting the contractor.

*Example: When selecting an architect, the qualifications and experience of the architect and the amount of attention and service the architect offers to provide is important, as well as the price of the services offered.*

- Because input from applicants is an important part of the process, the sub-recipient's statement of work focuses on what the sub-recipient needs, rather than explicitly how that need will be met.

- The sub-recipient should have a written plan for evaluating technical and cost proposals before the RFP is issued. The plan should specify the objective criteria, the method for evaluating those criteria, include a description of the ranking method that will be used, and identify the personnel who will review the proposals.
- Two kinds of criteria may be used:
  1. Threshold criteria - those that qualify or disqualify an applicant, based on a "yes" or "no" answer. For example, if an applicant for architectural/engineering services does not have the required insurance or registrations, the proposal is disqualified.
  2. Ranking criteria - qualitative factors - that may distinguish one applicant from another. For example, if one contractor has extensive experience designing multifamily housing, and another single-family housing, the sub-recipient might rank their experience and qualifications differently, depending upon the nature of the housing to be designed.
- Some established criteria might be more important than others. Many sub-recipients use a point system to give differing weights to the evaluation criteria.

*Example: A sub-recipient issues an RFP for a developer of affordable housing. On a scale of 100 points, giving 20 points for quality of the design and 10 points for past experience would mean that, in the selection of a developer, the sub-recipient believes that the quality of the design is twice as important as the developer's past experience.*

- In addition to requesting proposals from all known interested contractors, the sub-recipient should advertise for proposals in newspapers and trade journals, and place notices in public places.
- The procurement policy must explain what the sub-recipient will do if only one proposal is received. The sub-recipient may:

D. Non-Competitive Awards

- Awarding a contract without competition is permitted **only** when it is not possible to use one of the three competitive methods described above, and only when fully justified by the sub-recipient.
- Acceptable reasons for a non-competitive procurement include:
  - a necessary item is available from only one source;

- the time needed to conduct a competitive procurement is not available because of an emergency situation;
  - the sub-recipient attempted a competitive solicitation but did not receive a sufficient response to assure competition; or,
  - in other circumstances approved by HUD.
- The sub-recipient must prepare a written justification that covers the following topics:
- a description of the needed goods or services that are being procured;
  - a discussion of previous purchases the sub-recipient has made for the needed items, including whether previous procurements were competitive or noncompetitive;
  - an explanation of the circumstances which make the non-competitive procurement necessary, including a description of the efforts the sub-recipient made to find competitive sources; and
  - a description of efforts the sub-recipient will take in the future to promote competition for this requirement.
- All non-competitive procurements **must be approved** by DHCD.
- Even though the sub-recipient is not selecting among several sub-contractors, it must take many of the same evaluation steps, including:
- determining that the proposed sub-contractor is responsible and that the bid is responsive.
  - determining that the proposed price is reasonable, and
  - negotiating with the provider to assure that the sub-recipient receives the most advantageous offer possible.

### 3. Types of Contracts

- Two** types of contracts are permitted:
- Firm, fixed-price contracts - require the contractor to deliver the product or service for an agreed-upon price, regardless of the costs the contractor incurs; or
  - Cost reimbursement contracts - the contractor agrees to make best efforts to provide the products or services within the estimated amount established in the contract. (Sub-recipients generally enter into cost reimbursement contracts that include a "not-to-exceed" limit).
- When the IFB process is used, **a fixed-price contract is required**. Either method is permitted for other types of procurements.

- Firm, fixed-price contracts offer sub-recipients more protection than do cost reimbursement contracts, but it may not be possible to use a firm, fixed-price contract when the required level of effort is not known.
- Sub-recipients may not enter into contracts that require them to pay:
  - Costs, plus a percentage of cost, because this form provides no incentive to the contractor to control costs; or
  - a percentage of construction costs for related services, because this method may encourage (for example) a design professional to "overdesign" the development.

## VI. ETHICS IN CONTRACTING

### A. Conflicts of Interest

- The sub-recipient must avoid actual and apparent conflicts of interest in the procurement process. In summary:
  - Employees must not participate directly or indirectly in procurement if the employee or any relative of the employee has a financial interest in the procurement.
  - A current or former employee cannot act as a principal or agent for another party related to a procurement in which the employee personally participated while a sub-recipient employee.
  - Current employees and (for at least a year after employment has ended) former employees may not attempt to sell to or contract with the sub-recipient.

### B. Gratuities and Kickbacks

- It is a violation of ethical standards for any person to offer or give to an employee or former employee a gratuity or offer of employment related to procurement.
- It is also a violation for any employee or former employee to accept such a gratuity or offer of employment.

### C. Confidential Information

- It is a violation of ethical standards to use confidential information for personal gain, or to release confidential information contained in a proposal, to anyone not authorized by the contracting officer.

### D. Influence Peddling

- It is a violation of ethical conduct for a former official of the sub-recipient to be hired on a contingent basis by a business-seeking award of contracts.

## E. Penalties

- Employees who violate ethical standards may be subject to civil and administrative penalties specified in the procurement policy and in state laws, including:
  - warnings and reprimands,
  - suspension with or without pay, or
  - termination of employment.

## VII. BONDING AND INSURANCE REQUIREMENTS

### A. Completion Assurance

- For contracts of more than \$100,000, the selected contractor must give the subrecipient assurance that the work will be done in accordance with the terms of the construction contract.
- Sub-recipients may require any of the following forms of completion assurance:
  - A performance and payment bond for 100 percent of the total contract price;
  - separate performance and payment bonds, each for 50 percent or more of the contract price;
  - a deposit with the sub-recipient of a cash escrow of at least 20 percent of the total contract price;
  - a Letter of Credit (LOC) for 25 percent of the total contract price, unconditionally payable upon demand of the sub-recipient; or
  - a LOC for 10 percent of the total contract price and compliance with the procedures for monitoring of disbursements by the contractor.
- Completion assurance that gives the sub-recipient complete (100 percent) coverage is the best protection for the sub-recipient but may make it difficult for smaller contractors to participate.
- The sub-recipient should inform bidders of the types of completion assurances that will be acceptable in bid documents.

### B. Insurance During Construction

- Contractors should carry at least the following minimum amounts of insurance:
  - workers' compensation and employees' liability - \$100,000 per person;
  - auto insurance for injuries and damages caused by the contractor's vehicle on the job site;

- comprehensive public liability - \$250,000 per person, and property damage \$100,000 per accident, with an aggregate limit of at least \$300,000.
- ☐ Sub-recipients may require additional insurance coverage based upon the size of the project undertaken by the contractor.

C. Small/Minority-Owned Business Outreach and Section 3

- ☐ In accordance with Section 281 of the National Affordable Housing Act, subrecipients must take affirmative steps to use minority and woman-owned businesses for their funded activities.
- ☐ In addition, Section 3 of the Housing and Community Development Act of 1968 states that employment and other economic opportunities generated by federal financial assistance for housing and community development programs be, to the greatest extent feasible, directed toward very low and low-income persons, particularly those residing in the project or program area.

**PROCUREMENT AND SUBCONTRACTS**

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**HCD PROCEDURES:**

DELEGATION OF APPROVAL AUTHORITY FOR SUBCONTRACTS AND  
PAYMENT REQUESTS

**ATTACHMENTS:**

SUBCONTRACT AGREEMENT (CONSULTANT, PROFESSIONAL, ETC.)	15A
CERTIFICATION REGARDING LOBBYING	15B
SUBCONTRACT AGREEMENT (AUDITORS)	15C