

GENERAL POLICY ISSUANCE #02-10.02

TO: Community Affairs Subgrantees

FROM: E. E. Fariss
Director
Community Affairs Division

DATE: March 19, 2002

SUBJECT/TITLE: Procurement/Procurement Standards

BACKGROUND

This policy issuance rescinds WAP Policy Issuance #88-10.1, and CSBG Policy Issuance #88-10.1.

Federal and State law requires compliance with established procurement standards to ensure that federal programs acquire materials and services efficiently and economically. The procurement requirements transmitted through OMB A-87, A-110, A-112, Materials Installation Standards Manual, and the Texas Government Code Chapter 783, 10 CFR Part 600 (Financial Assistance Rules) have been summarized in the following pages.

ACTION REQUIRED

Contractors are required to incorporate the enclosed procurement standards into their current program operations.

EFFECTIVE DATE

Upon Receipt.

INQUIRIES

If you have any questions regarding this policy issuance, please contact your assigned program officer.

PROCUREMENT STANDARDS

100. PURPOSE

The purpose of this issuance is to establish standards and procedures for the procurement of IIII supplies, equipment, and services for all contracts administered through the Community Affairs Division of the Texas Department of Housing and Community Affairs (TDHCA). These standards are provided to ensure that all procurement transactions, without regard to dollar value, are conducted in a manner which will ensure maximum open and free competition as well as compliance with all applicable federal laws and executive orders, state law, and contract provisions. Please reference OMB Circulars A-87, A-110, A-122 (as applicable), Materials Installation Standards Manual, Texas Government Code Chapter 783, 10 CFR Part 600 (Financial Assistance Rules).

110. CODE / STANDARD OF CONDUCT

Contractor must establish and maintain a written code or standard of conduct that will govern the performance of their officers, employees, or agents engaged in the solicitation, award and administration of contracts supported by state or federal funds.

110.1 Contractor must include, at a minimum, the following standards of conduct:

No employee, officer, or agent of the contractor shall participate in the selection or in the award or administration of a contract supported by federal or state funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when a financial and/or other interest in the firm selected for award would involve:

- the employees, officers, or agents.
- any members of their immediate families.
- their partners, or
- an organization which employs or is about to employ any of the above.

The contractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

To the extent permitted by state or local law or regulations, contractors must provide for penalties, sanctions or other disciplinary actions for violation of such code or standards by the contractor's officers, employees or agents, by contractors or their agents.

110.2 Contractor must establish a process to monitor the performance of parties involved in h contractor involving Federal and State funds to ensure compliance with Federal, State, and local guidelines.

120. CONTRACTOR RESPONSIBILITY

All procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition. Contractor must develop written procurement procedures that will provide for, at a minimum, the following procedural requirements:

- 120.1 Procedures to prevent the purchase of unnecessary or duplicate items.
- 120.2 A system to assure the procurement of supplies, equipment, and services in the most economical and efficient manner.
- 120.3 An administrative system to resolve contractual and administrative issues arising from procurement efforts. These issues include, but are not limited to, evaluation protests, disputes, and claims by contractor's source for goods/services for procurement. Contractor may forward protests, disputes, and/or claims to TDHCA for final determination only after all administrative remedies at the contractor level have been exhausted. Final review by TDHCA is limited to:
- a. Possible violation of federal laws or regulations. Violation of state or local law will be under the jurisdiction of state or local authorities.
 - b. Possible violation of contractor is established protest procedures or failure to review a complaint or protest.
- 120.4 Where appropriate, the contractor must perform an analysis of lease versus purchase alternatives to determine the most economical approach for procurement.
- 120.5 Establish affirmative steps to ensure the utilization of small businesses, minority businesses, and women-owned businesses when possible as a source of supplies, equipment, and services, to include but not be limited to:
- a. Encourage the inclusion of at least one small business, minority business, and women-owned business when possible on all formal and informal procurement actions.
 - b. Encourage preference to small business, minority business, and women-owned business in case of a tie or equal bid in the procurement process.
 - c. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small business, minority-owned firms, and women's business enterprises.
 - d. Encourage contracting with consortiums of small businesses, minority- owned firms, and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - e. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, the Department of Commerce's Minority Business Development Agency, and various other minority and women's business enterprise organizations in the solicitation and utilization of small business, minority-owned firms, and. women's business enterprises.

120.6 Assure compliance with federal state and local laws. The procurement, procedures must meet the guidelines, where applicable, of OMB Circulars A-87, A-102, A-110, A-122 (as applicable), Materials Installation Standards Manual, the Uniform Grant Management Common Rule Codified at 24 CFR Part 85, Texas Government Code Chapter 783 et seq., 10 CFR Part 600 (Financial Assistance Rules).

120.7 Contractor shall perform some form of cost or price analysis concerning every procurement effort. Acceptable forms of cost or price analysis include but are not limited to:

- a. Analysis/Comparison of market prices to submitted quotations, or similar indicators together with discount opportunities.
- b. Review and evaluation of each element of cost to determine allocation ability, reasonableness, and allowability.

121. PROCUREMENT SYSTEM REVIEW

TDHCA will perform a review of contractor's written procurement system. The purpose of the review will be to determine if the contractor's procurement system complies with all applicable federal and state laws and TDHCA's procurement standards provided herein.

Upon request, TDHCA will provide training and technical assistance for the development or improvement of a procurement system. Requests for assistance are to be submitted to the Community Affairs Division.

122. PROCUREMENT RECORDS

Contractor must establish and maintain written, documented records detailing the significant history of each procurement action. At a minimum, the records shall provide:

- Rationale for the method of procurement used.
- Basis for contractor selection.
- Justification for lack of competition when competitive bids or offers are not obtained.
- Contractor selection or rejection.
- Basis for cost or price used.

123. VENDOR SELECTION

123.1 Contractor must conduct all procurement transactions, regardless of the method of procurement used and without regard to dollar value, in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Examples of restricting competition include, but are not limited to:

- a. The placement of unreasonable requirements on vendors in order for them to qualify for consideration.

b. Non-competitive practices between vendors.

c. Organizational conflicts.

d. Unnecessary experience or bonding requirements. (See Section 126 of this issuance)

123.2 All procurement solicitations must provide a clear, accurate description of the specifications, qualifications, and technical requirements of the material, equipment or services to be procured.

a. Description/specifications must not contain features that unduly restrict competition.

b. Description/specifications must include a qualitative nature of material, equipment, or services to be procured.

c. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, the Contractor may use "brand name or equal" to define the performance requirements of procurement. Contractor must provide the specific features of "brand name or equal" when such items are included in the solicitation.

123.3 Awards shall be made openly to responsible bidders who possess the potential () ability to perform successfully under the stated terms and conditions of a proposed procurement.

123.4 Consideration shall be given to:

a. Bidder's integrity.

b. Bidder's record of past performance.

c. Bidder's financial and technical resources.

d. Price.

123.5 Contractor must make available all materials related to procurement upon request by TDHCA.

124. METHODS OF PROCUREMENT

Contractors shall use the 'most appropriate of the following procurement methods for the purchase of all supplies, equipment, and services:

- Small Purchase Procedures
- Procurement by Sealed Bids
- Procurement by Competitive Proposals
- Procurement by Non-competitive Proposals

124.1 Small Purchase Procedures:

This procedure may be used only on those services, supplies, or equipment costing in the aggregate of \$25,000 or less.

- a. Contractor must establish a clear, accurate description of the specifications for the technical requirements of the material, equipment, or services to be procured.
- b. Contractor must obtain a written price or rate quotation from an adequate number of qualified sources. An adequate number is, at a minimum, three different sources.
- c. Contractor must select the vendor who complies with the technical requirements, and whose price is the lowest.

124.2 Procurement by Sealed Bids:

Sealed bids must be publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

Contractor must formally advertise, for a minimum of three days, in newspapers or through notices posted in public buildings throughout the service area. Advertising beyond the contractors'/grantee's service area is allowable and recommended by TDHCA. The advertisement should include, at a minimum, a response time of fourteen days prior to the closing date of the bid request. Cities and counties must comply with the statutorily-imposed publication requirements in addition to those requirements stated herein. ←

When advertising for material or labor services, contractor shall indicate a period for which the materials or services are sought (e.g. for a one-year contract with an option to renew for an additional four years). This advertised time period shall determine the length of time which may elapse before re-advertising for material or labor services, except that advertising for labor services must occur at least every five years.

In order to use the competitive sealed bid method of procurement, the following conditions must exist:

- a. Contractor must be able to provide a complete, adequate, and realistic description of the services, supplies, or equipment solicited for procurement.
- b. Two or more responsible suppliers must be willing and able to compete effectively for the services, supplies, or equipment solicited for procurement. ←
- c. The procurement must lend itself to a firm-fixed price contract, and selection of the successful bidder can be made principally on the basis of price. The adjustment of price based on methods such as "cost-plus- a-percentage-of-cost" or "percentage of construction cost" methods of contracting are not allowable.

All bids must be opened publicly at the time and place stated in the invitation for bids, i.e., in the advertisement for bids or in the solicitation package. .

Contractor must award a firm-fixed price contract by written notification to the responsible bidder whose bid conforms to the invitation for bid requirements and is lowest in price.

Contractor must provide prompt written notification to unsuccessful bidders stating the reason(s) they were unsuccessful. Notification must occur not more than ten days from the date of the bid opening.

Any and all bids may be rejected when there are sound, documented business reasons that the bid is not in the best interest of the contractor.

The procurement process should take into account whether the successful bidder is responsive to the terms of the solicitation and has demonstrated that he/she is a responsible bidder.

- a. A responsive bidder is one who submits a completed, sealed bid packet within the stated time and in accordance with the bid specifications.
- b. A responsible bidder is one who demonstrates, via his or her responses to the selection criteria, his or her ability to deliver the supplies, equipment, or services solicited for procurement.

The written "selection criteria" is a crucial part of the competitive sealed bid method of procurement and must be part of the bid packet. At a minimum, the "selection criteria" must consider the following factors:

- a. Bidder's integrity.
- b. Record of past performances.
- c. Financial resources.
- d. Technical resources.
- e. Price of bid.

While additional selection criteria may be used, it is imperative that any additional selection criteria not be so restrictive as to limit open and free competition.

Although price is the most important selection criterion in the competitive sealed bid method, contractor must consider all selection criteria.

Contractor is to assign a point rating system to the selection criteria, with price receiving the greatest number of points, minimum 50% of points available.

If the competitive sealed bid method is used to procure services, supplies, or equipment, the contract must be awarded to the most responsible bidder who is responsive to the invitation for bid and who has the lowest price.

The contract awarded must be a firm-fixed price contract which states either a total price or a per unit price.

In the event of a tie bid, the contractor may take any of the following actions:

- Refuse the bids and re-solicit.
- Award the contract to the bidder who submitted the earliest bid. .
- Grant a multiple award.
- Award the bid to a small business, minority business, or women- owned business pursuant to Section 120.5 of this issuance.

124.3 Procurement by Competitive Proposal

Contractor must receive, in every instance, except solicitation for financial auditor, written approval from TDHCA to conduct a competitive proposal solicitation.

The competitive proposal method of procurement utilizes request for proposals as opposed to requests for bid. When using competitive proposals, the vendors are competing primarily based on qualifications with price being the negotiable item.

This method of procurement is to be used only for obtaining services. Cities and counties must also comply with the Professional Services Procurement Act, Texas Government Code Chapter 2254.

If the competitive proposal method of procurement is used, the following requirements shall apply:

- a. The Request for Proposal (RFP) must be publicized. The preferred method of advertising is the local service area newspapers. This advertisement should, at a minimum, allow fourteen days before the RFP is due. The due date must be stated in the advertisement.
- b. The RFP must identify all evaluative factors and their relative importance. A points rating system must be assigned to each evaluative factor indicating the level of importance of each factor. At a minimum, the following factors must be considered:
 - (1) Contractor's integrity.
 - (2) Record of past performances.
 - (3) Financial resources.
 - (4) Technical resources, and
 - (5) Price.

The time period for services shall be one year plus three additional years at a maximum.

Those factors providing information on qualifications should be weighted the heaviest. While additional evaluative factors may be considered, any additional factors must not be restrictive. Free and open competition is imperative.

Award shall be made to the responsible vendor whose proposal will be most advantageous to the contractor, price and other factors considered.

The most qualified competitor should be selected, subject to negotiation of a fair and reasonable compensation.

Any and all proposals may be rejected when there are sound documented business reasons in the best interest of the contractor.

Unsuccessful vendors are to be given written notification within ten days of why their proposals were not selected.

Negotiations are normally conducted with two or more of the most qualified vendors.

Neither proposals nor negotiations are to be made public until a contract is awarded.

A fixed price contract (lump sum or unit price) shall be awarded.

124.4 Procurement by Noncompetitive Proposals

Contractor must receive, in every instance, prior written approval from TDHCA to conduct a noncompetitive solicitation.

Noncompetitive negotiation is procurement through solicitation of a proposal from only one source. Contractor may use the noncompetitive negotiation method of procurement only if one or more of the following conditions exist:

- a. The service, supply, or equipment is available only from a single source.
- b. A public emergency exists preventing the time required for competitive solicitation.
- c. After solicitation of a number of sources, competition is determined inadequate.

124.5 Alternative Procurement Method

Any alternative method must receive prior written approval from TDHCA.

In the rare instance when contractor is unable to utilize one of the above /procurement methods, the contractor must provide written correspondence to TDHCA detailing the problems and describing the proposed procurement method. Contractor's alternative method must meet, at a minimum, the following two criteria:

(1) Provide for free and open competition; and

(2) Secure the best quality for the best price.

The contractor may be able to use the Procurement by Competitive Proposal method as an alternative procurement method. When determined that the Procurement by Competitive Proposal is the most appropriate procurement method, TDHCA will provide guidance to the contractor on the Procurement by Competitive Proposal process.

124.6 Equipment, Supplies, Services

"Equipment" means tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit. If the aggregate cost exceeds \$5,000, approval from the TDHCA Community Affairs Division must be obtained before the purchase takes place.

"Supplies" means all personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

"Services" means intangible property and debt instruments that include, but are not limited to, trademarks, copyrights, patents and patent applications, and such property as loans, notes, and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

125. REQUIRED CONTRACT PROVISIONS

Contractors shall include the following contract provisions or conditions in procurement contracts and subcontracts:

- 125.1 Contracts in excess of \$25,000 shall include contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances where contractors violate or breach the contract terms, and provide for such remedial actions as may be appropriate.
- 125.2 All contracts in excess of \$25,000 shall include suitable provisions for n termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstance beyond the control of the contractor.
- 125.3 All contracts shall include a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal

Contract Compliance Programs, Equal Employment Opportunity, and Department of Labor.

- 125.4 All contracts and sub-grants in excess of \$2,000 for construction or repair shall include a provision for compliance with the Copeland "anti-kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). Any suspected or reported violations of this Act shall immediately be reported to Texas Department of Housing and Community Affairs.
- 125.5 Contracts shall include a provision of federal grantor agency's requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental, or demonstration work, with respect to any discovery or invention which arises or is developed in the course of, or under such contract.
- 125.6 Contracts shall include a provision with regard to independent contractor status to hold harmless and indemnify contractor from and against any and all claims, demands and course of action asserted by any third party arising out of or in connection with the services to be performed under contract.
- 125.7 Contracts shall include a provision regarding conflict of interest and nepotism.

Contractor covenants that neither it nor any member of its governing body presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this contract. Contractor further covenants that in the performance of this contract no person having such interest shall be employed or appointed by contractor.

No person (1) Who is an employee, agent, consultant, officer, or official of the contractor and who exercises or has exercised any functions or responsibilities with respect to assisted contract activities; or (2) Who is in a position to participate in a decision making process or gains inside information with regard to such activities, may obtain a personal or financial interest or benefit, direct or indirect, in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure.

Contractor's employees, officers, and/or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors, or potential subcontractors.

- 125.10 Contracts shall include a provision regarding sectarian activity;

Contractor shall ensure that no funds under this contractor are used, either directly or indirectly, in the support of any religious or anti- religious activity, worship, or instruction.

- 125.11 Contracts shall include a provision to prohibit political activity.

None of the funds provided under this contract shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of Contractor from furnishing to any member of its governing body upon request, or to any other local or state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from employment.

No funds provided under this contract may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of Contractor, the State of Texas, or the government of the United States.

None of the funds provided under this contract shall be paid to any official or employee who violates any of the provisions of this section.

125.12 Contracts shall include a provision to prevent fraud and abuse.

Contractor shall establish, maintain, and utilize internal control systems and procedures sufficient to prevent, detect, and correct incidents of waste, fraud, and abuse in WAP and to provide for the proper and effective management of all program and fiscal activities funded by this contract. Contractor's internal control systems and all transactions and other significant events must be clearly documented and the documentation made readily available for review by Department.

Contractor shall give Department complete access to all of its records, employees, and agents for the purpose of monitoring or investigating the weatherization program. Contractor shall fully cooperate with Department's efforts to detect, investigate, and prevent waste, fraud, and abuse. Contractor shall immediately notify the Department of any identified instances of waste, fraud, or abuse.

Department will notify the funding source upon identification of possible instances of waste, fraud, and abuse or other serious deficiencies.

Contractor may not discriminate against any employee or other person who reports a violation of the terms of this contract or of any law or regulation to Department or to any appropriate law enforcement authority, if the report is made in good faith.

125.13 Contracts shall include a provision to amend the contract.

Any alterations, additions, or deletions to the terms of this contract which are required by changes in federal law and regulations or state statute are automatically incorporated into this contract without written and administrative code amendment hereto, and shall become effective on the date designated by such law or regulation.

It is understood and agreed by the parties hereto that performances under this contract must be rendered in accordance with federal law and regulations, and Texas State Law Administrative Code and the assurances and certifications made by Department to

federal funding agencies with regard to the operation of this program. Based on these considerations, and in order to ensure the legal and effective performance of this contract by both parties, it is agreed by the parties hereto that the performance under this contract may be amended in the following manner: TDHCA, from time to time during the period of performance of this contract, shall issue policy directives which serve to establish, interpret, or clarify performance requirement under this contract. Such policy directives shall be promulgated by the Executive Director or her designee in the form of Issuances, shall have the effect of qualifying the terms of this contract, and shall be binding upon contractor as if written herein.

Except as specifically authorized by the agency in writing or otherwise authorized by the terms of this contract, any alterations, additions, or deletions to the terms of this contract shall be amended hereto in writing and executed by both parties to this contract.

125.14 Contracts shall include a provision assuring a legal authority to sign the contract.

Contractor represents that it possesses the practical ability and the legal authority to enter into this contract, receive and manage the funds authorized by this contract, and to perform the services Contractor has obligated itself to perform under this contract.

The person signing this contract on behalf of Contractor hereby warrants that he/she has been authorized by Contractor to execute this contract on behalf of Contractor and to bind Contractor to all terms herein set forth.

Department shall have the right to suspend or terminate this contract if there is a dispute as to the legal authority of either Contractor or the person signing this contract to enter into this contract or to render performances hereunder. Should such suspension or termination occur, contractor is liable to Department for any money it has received for n performance of the provisions of this contract.

125.15 Contracts shall include a provision to the effect that illHCA, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books documents, paper, and records which are directly pertinent to the contract.

125.16 Contracts shall include a provision to require, after final payment and all other pending matters are closed, pertinent record retention for four years after fiscal year end.

125.17 For all contracts in excess of \$100,000, contracts shall include a provision requiring compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 U.S.C. 7401-7671], 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15). This provision does not apply to the Community Service Block Grant or the Comprehensive Energy Assistance Program contracts.

125.18 Contracts shall include a nondiscrimination provision that will provide the following assurances:

- a. No person shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the contract.
- b. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1990, or with respect to an otherwise qualified disabled individual as provided in section 504 of the Rehabilitation Act of 1973, shall also apply to any such program or activity.

126. BONDING REQUIREMENTS

The following requirements relate only to construction or facility improvements.

- 126.1 For contracts exceeding \$100,000, the awarding agency may **accept** the bonding policy and requirements of the recipient, provided the awarding agency has made a determination that TDHCA is adequately protected.
- 126.2 For contracts in excess of \$100,000, and for which the contractor cannot make a determination that the Government's interest is adequately protected, a bid guarantee from each bidder equivalent to five percent of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid bond in the form of the following may represent a "bid guarantee".
 - a. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all contractors' obligations under such contract.
 - b. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

- 126.3 Cities and counties must comply with the requirements of Texas Civil Statutes, Articles 2252 and 5160, and Local Government Code Sections 252.044 and 262.032, as applicable.

127. DEPARTMENT OF ENERGY (DOE) REQUIREMENTS FOR WEATHERIZATION ASSISTANCE PROGRAM (WAP)

- 127.1 Contractor must receive prior written approval from TDHCA before entering into any sole source contract or a contract where only one bid or proposal is received when the

value of the contract is expected to exceed \$25,000 in the aggregate and the contractor is defined as a local government or Indian Tribe.

- 127.2 Any purchase of vehicles shall receive prior written approval from DOE. Three bids along with purchase justification are to be submitted to TDHCA. TDHCA will seek DOE approval and notify contractor of actions taken.
- 127.3 No grant funds shall be used to:
- a. Weatherize a dwelling unit which is designated for acquisition or demolition by a federal, state, or local program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed; or
 - b. Install or otherwise provide weatherization materials for a dwelling unit weatherized previously with grant funds, unless:
 1. Weatherization services are performed under the "low cost/no cost" activity;
 2. Such dwelling unit has been damaged by fire, flood or act of God and repair of the damage to weatherization materials is not paid for by insurance; or
 3. The dwelling unit was partially weatherized under this part or *n* under other federal programs during the period after September, 30, 1993. If the unit was partially weatherized during this period, grants funds may be used for additional weatherization under this part.
- 127.4 Payments for labor costs shall consist of:
- a. Payments permitted by the Department of Labor to supplement wages paid to training participants and public service employment workers pursuant to Workforce Investment Act (WIA), or;
 - b. Payments to employ labor or to engage a contractor (particularly a nonprofit organization or a business, owned by disadvantaged individuals, which performs weatherization services), to install weatherization materials, provided a grantee has determined an adequate number of volunteers, training participants, and public service employment workers, are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.
- 127.5 Low-cost /no-cost weatherization activities include:
- a. Inexpensive weatherization materials were used, such as water flow controllers, furnace or cooling filters, or items which are primarily directed toward reducing infiltration, including weather-stripping, caulking, glass patching, and insulation for plugging.
 - b. No labor costs.
 - c. Cost of materials not to exceed \$50 per unit.

127.6 Interest penalties cannot be construed to be an obligation of TDHCA. Payments of such interest may not be made from TDHCA funds nor be counted toward meeting a cost-sharing requirement of an award.
