

<b>COST ESTIMATE</b>	<b>2 BEDROOM 864 TOTAL SQ FT 1 BATH</b>	<b>3 BEDROOM 1134 TOTAL SQ FT 2 BATH</b>	<b>4 BEDROOM 1338 TOTAL SQ FT 2 BATH</b>	<b>5 BEDROOM 1445 TOTAL SQ FT 2 BATH</b>
<b>MATERIALS</b>				
REBAR PACKAGE	\$1,411.08	\$1,711.18	\$2,007.00	\$2,167.50
CONCRETE	\$2,224.00	\$2,896.00	\$3,417.00	\$3,690.00
LUMBER	\$9,139.50	\$11,084.18	\$12,906.21	\$14,412.49
PLUMBING	\$1,000.00	\$1,200.00	\$1,300.00	\$1,400.00
INSULATION	\$1,000.00	\$1,100.00	\$1,200.00	\$1,300.00
FIXTURES & HARDWARE	\$550.00	\$600.00	\$650.00	\$700.00
WATER HEATER	\$388G - \$300E	\$435G - \$422E	\$435G - \$422E	\$435G - \$422E
HVAC SYSTEM	\$1,875.43	\$2,046.40	\$2,273.95	\$2,535.33
CABINERY	\$3,000.00	\$4,500.00	\$4,500.00	\$4,500.00
PAINT	\$696.00	\$848.00	\$1,008.00	\$1,144.00
	<b>\$18,240.01</b>	<b>\$21,914.26</b>	<b>\$25,190.66</b>	<b>\$27,777.82</b>

<b>LABOR</b>				
DEMOLITION	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
FOUNDATION	\$863.00	\$1,133.00	\$1,337.00	\$1,445.00
FRAMING	\$1,880.00	\$2,466.00	\$2,909.00	\$3,142.00
SHEETROCK	\$300.00	\$400.00	\$450.00	\$500.00
ROOF	\$250.00	\$250.00	\$300.00	\$300.00
PLUMBING	\$3,000.00	\$4,200.00	\$4,200.00	\$4,500.00
ELECTRICAL	\$2,000.00	\$2,200.00	\$2,400.00	\$2,600.00
PAINTERS	\$1,555.20	\$2,041.20	\$2,408.40	\$2,601.00
TILE	\$561.00	\$736.00	\$869.00	\$938.00
CABINERY	\$350.00	\$450.00	\$500.00	\$550.00
	<b>\$13,759.20</b>	<b>\$16,876.20</b>	<b>\$18,373.40</b>	<b>\$19,576.00</b>

<b>OTHER</b>				
FILL DIRT	\$750.00	\$750.00	\$750.00	\$750.00
SOIL TREATMENT	\$250.00	\$250.00	\$250.00	\$250.00
BUILDING PERMIT	\$105.00	\$105.00	\$105.00	\$105.00
SEWER CONNECTION	\$100.00	\$100.00	\$100.00	\$100.00
TEMP POSTS	\$464.00	\$464.00	\$464.00	\$464.00
WATER METER	\$375.00	\$375.00	\$375.00	\$375.00
ELECTRICAL HOOK- UP FEE	\$45.00	\$45.00	\$45.00	\$45.00
	<b>\$2,089.00</b>	<b>\$2,089.00</b>	<b>\$2,089.00</b>	<b>\$2,089.00</b>

<b>MATERIALS</b>	<b>\$18,240.01</b>	<b>\$21,914.26</b>	<b>\$25,190.66</b>	<b>\$27,777.82</b>
<b>LABOR</b>	<b>\$13,759.20</b>	<b>\$16,876.20</b>	<b>\$18,373.40</b>	<b>\$19,576.00</b>
<b>OTHER</b>	<b>\$2,089.00</b>	<b>\$2,089.00</b>	<b>\$2,089.00</b>	<b>\$2,089.00</b>
	<b>\$36,177.21</b>	<b>\$42,968.46</b>	<b>\$47,742.06</b>	<b>\$51,531.82</b>
<b>10% PROFIT</b>	<b>\$3,617.72</b>	<b>\$4,296.85</b>	<b>\$4,774.21</b>	<b>\$5,153.18</b>
<b>TOTAL</b>	<b>\$39,794.93</b>	<b>\$47,265.31</b>	<b>\$52,516.27</b>	<b>\$56,685.00</b>

10% Markup	\$3,979.49	\$4,726.53	\$5,251.63	\$5,668.50
Total Cost	\$43,774.42	\$51,991.84	\$57,767.89	\$62,353.50

15% Markup	\$5,969.24	\$7,089.80	\$7,877.44	\$8,502.75
Total Cost	\$45,764.17	\$54,355.10	\$60,393.71	\$65,187.75

Contractor's Bid Amt. \$	45,000.00			
<b>TOTAL</b>	\$39,794.93	\$47,265.31	\$52,516.27	\$56,685.00
Difference	\$5,205.07	-\$47,265.31	-\$52,516.27	\$56,685.00
Percentage Overage	<b>13.08%</b>	<b>-1</b>	<b>-1</b>	<b>1</b>

*Contractor  
bid packet*

County. Items not picked up within one (1) week after notification shall be deemed a donation to County and may be used or disposed of at County's discretion and without waiver of any other rights of County as to the item's nonconformity.

- 29. This document and any disputes arising hereunder shall be governed and construed according to the laws of the State of Texas, and will be performable exclusively in Hidalgo County, Texas.
- 30. The successful bidder shall not assign, sell, transfer or convey its rights under any awarded contract, in whole or in part, without the prior written consent of County.

**BID FOR HIDALGO COUNTY-  
“THE DEMOLITION AND RECONSTRUCTION OF ONE (1) UNIT IN THE  
CITY OF ALAMO, ONE (1) UNIT IN THE CITY OF MERCEDES, ONE (1)  
UNIT IN THE COUNTYWIDE AREA OF MONTE ALTO, AND ONE (1) UNIT  
IN THE COUNTYWIDE AREA OF MISSION.”**

Deliver To: Martha L. Salazar, CPPB, Purchasing Agent  
Hidalgo County Purchasing Department  
2802 So. Bus. Hwy 281 – Hidalgo County Administration Building  
Postal Mailing Address: 2812 So. Bus. Hwy 281 (corner of Bus. 281 &  
Canton Rd.)  
Edinburg, Texas 78539

In accordance with the Specifications, and subject to all laws and regulations of the United States and state and local laws, the undersigned bidder proposes and commits to furnish all labor, equipment, material, software and services as set forth in the documents hereinbefore mentioned. The undersigned bidder further agrees, upon acceptance of its bid, to execute a contract and/or Purchase Order issued by Hidalgo County for performing and completing the work described in the Specifications within the time stated and for the prices proposed in the documents attached hereto and made a part hereof.

Bidder acknowledges receipt of all of the pages of the documents referenced in the Invitation to Bid Checklist presented in connection with this procurement. Bidder understands that Hidalgo County reserves the right to reject any or all bids and further reserves the right to design the evaluation criteria to be used in selecting the lowest and best bid.

## INVITATION FOR BIDS HOUSING REHABILITATION

The **COUNTY OF HIDALGO URBAN COUNTY PROGRAM** is accepting bids on behalf of qualified homeowners for Housing Rehabilitation Grant # M-09-UC-48-0501 until 9:30 A.M. Wednesday, June 02, 2010 at the Hidalgo County Purchasing Department, 2812 S. Business Highway 281, New Administration Building, Edinburg, Texas, at which time and place all bids will be publicly opened and read aloud. Sealed bids should have a notation on the lower left hand corner of the envelope, "Bids on Housing Rehabilitation Grant # M-09-UC-48-0501".

Bids are being requested for the demolition and reconstruction of two (2) units in the County wide area, along with one (1) unit in the City of Elsa, one (1) unit in the City of Mercedes, one (1) unit in the City of San Juan and one (1) unit in the City of La Villa. Construction shall comply with the 2000 International Building Code. The information for certified bidders may be obtained and examined at:

Urban County Program Office  
Contact: Steve De La Garza  
(956) 787-8127  
1916 Tesoro Blvd.  
Pharr, Texas 78577

*bid advertisement*

All contractors are required to have Workman's Compensation Insurance and general liability insurance. 100% of the project will be undertaken using federal funds through a grant from the Department of Housing and Urban Development. A certified check or bank draft payable to the County of Hidalgo, negotiable U.S. Government bonds (at par value) or a satisfactory bid bond executed by the bidder and as acceptable surety in the amount equal to five percent (5%) of the total bid shall be submitted with each bid. Please note that a single submitted certified check or bank draft payable for a lump sum of multiple units, will no longer be accepted.

Performance or payment bonds are not required. However, if contractor does not provide a performance bond, contractor may submit a request for 90% payment of the amount available when the improvements have been completed and the 10% retainage upon inspection approval thirty days after completion. If contractor provides performance bond, three payments will be made at 50% (40% payment) & 100% (90% payment) completion, and 10% retainage upon inspection approval thirty days after completion.

**A pre-bid conference** is scheduled on **Tuesday at 9:30 A.M. on Tuesday, May 25, 2010**, at the Hidalgo County Purchasing Department, 2812 S. Business Highway 281, New Administration Building, Edinburg, Texas, where contractors can address or discuss bid specifications, floor plans, site locations or any other relevant information.

Attention is called to the fact that the contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, handicap, national origin, and family status.

The Hidalgo Urban County Program will provide all necessary orientation to new contractors interested in becoming certified for this program. **The County of Hidalgo on behalf of the owners specifically reserves the right to reject any or all bids or waive any informalities in the bidder.** All bids become the property of the homeowners and the County of Hidalgo, Urban County Program.

The HIDALGO URBAN COUNTY PROGRAM reserves the right to award each unit individually or in the aggregate, which ever is more cost effective in the interest of the County.

BY ORDER OF THE COMMISSIONER'S COURT OF HIDALGO COUNTY, TEXAS on this 4th day of May 2010.

**MARTHA SALAZAR, HIDALGO COUNTY PURCHASING**

2. *Tenant-based rental assistance.* The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with the property standards of § 92.251.

### **§ 92.505 Applicability of Uniform Administrative Requirements**

- a. *Governmental entities.* The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32-85.34, 85.36, 85.44, 85.51, and 85.52.
- b. *Non-profit organizations.* The requirements of OMB Circular No. A-122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§ 84.2, 84.5, 84.13-84.16, 84.21, 84.22, 84.26-84.28, 84.30, 84.31, 84.34-84.37, 84.40-84.48, 84.51, 84.60-84.62, 84.72, and 84.73.
- c. OMB Circulars referenced in this part may be obtained from: Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503; telephone: (202) 395-7332.

### **§ 92.506 Audit**

Audits of the participating jurisdiction, State recipients, and subrecipients must be conducted in accordance with 24 CFR 84.26 and 85.26.

### **§ 92.507 Closeout**

HOME funds will be closed out in accordance with procedures established by HUD.

### **§ 92.508 Recordkeeping**

- a. *General.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of this part. At a minimum, the following records are needed:
  1. *Records concerning designation as a participating jurisdiction.*
    - i. For a consortium, the consortium agreement among the participating member units of general local government as required by § 92.101.
    - ii. For a unit of general local government receiving a formula allocation of less than \$750,000 (or less than \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part), records demonstrating that funds have been made available (either by the State or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and \$750,000 (or \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion) as required by § 92.102(b).

**OMB CIRCULAR A-87 (REVISED 05/10/04)**

CIRCULAR NO. A-87

Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Cost Principles for State, Local, and Indian Tribal Governments

1. Purpose. This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

2. Authority. This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

3. Background. As part of the governmentwide grant streamlining effort under P.L. 106-107, *Federal Financial Award Management Improvement Act of 1999*, OMB led an interagency workgroup to simplify and make consistent, to the extent feasible, the various rules used to award Federal grants. An interagency task force was established in 2001 to review existing cost principles for Federal awards to State, local, and Indian tribal governments; Colleges and Universities; and Non-Profit organizations. The task force studied Selected Items of Cost in each of the three cost principles to determine which items of costs could be stated consistently and/or more clearly. A proposed revised Circular reflecting the results of those efforts was issued on August 12, 2002 at 67 FR 52558. Extensive comments on the proposed revisions, discussions with interest groups, and related developments were considered in developing this revision.

4. Rescissions. This Circular rescinds and supersedes Circular A-87, as amended, issued May 4, 1995.

5. Policy. This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.

6. Definitions. Definitions of key terms used in this Circular are contained in Attachment A, Section B.

7. Required Action. Agencies responsible for administering programs that involve cost

12. "Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

### C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of this Circular.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

**2. Reasonable costs.** A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally- funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

**c. Market prices for comparable goods or services.**

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

**e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.**

**3. Allocable costs.**

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an

with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)*, as amended—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

9. *Drug-Free Workplace Requirements*—The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

## PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

### Subpart A—General

- Sec.
- 85.1 Purpose and scope of this part.
  - 85.2 Scope of subpart.
  - 85.3 Definitions.
  - 85.4 Applicability.
  - 85.5 Effect on other issuances.
  - 85.6 Additions and exceptions.

### Subpart B—Pre-Award Requirements

- 85.10 Forms for applying for grants.
- 85.11 State plans.
- 85.12 Special grant or subgrant conditions for "high-risk" grantees.

### Subpart C—Post-Award Requirements

#### FINANCIAL ADMINISTRATION

- 85.20 Standards for financial management systems.
- 85.21 Payment.
- 85.22 Allowable costs.
- 85.23 Period of availability of funds.
- 85.24 Matching or cost sharing.
- 85.25 Program income.
- 85.26 Non-Federal audit.

#### CHANGES, PROPERTY, AND SUBAWARDS

- 85.30 Changes.

## Office of the Secretary, HUD

## § 85.3

- 85.31 Real property.
- 85.32 Equipment.
- 85.33 Supplies.
- 85.34 Copyrights.
- 85.35 Subawards to debarred and suspended parties.
- 85.36 Procurement.
- 85.37 Subgrants.

### REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

- 85.40 Monitoring and reporting program performance.
- 85.41 Financial reporting.
- 85.42 Retention and access requirements for records.
- 85.43 Enforcement.
- 85.44 Termination for convenience.

### Subpart D—After-the-Grant Requirements

- 85.50 Closeout.
- 85.51 Later disallowances and adjustments.
- 85.52 Collection of amounts due.

### Subpart E—Entitlement [Reserved]

SOURCE: 53 FR 8068, 8087, Mar. 11, 1988, unless otherwise noted.

## Subpart A—General

### § 85.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

### § 85.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

### § 85.3 Definitions.

As used in this part:

*Accrued expenditures* mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

*Accrued income* means the sum of: (1) Earnings during a given period from

services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

*Acquisition cost* of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

*Administrative* requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

*Awarding agency* means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

*Cash contributions* means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

*Contract* means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

*Cost sharing or matching* means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

§ 85.36

24 CFR Subtitle A (4-1-04 Edition)

employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
  - (ii) Any member of his immediate family,
  - (iii) His or her partner, or
  - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.
- (4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
- (6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such

use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

- (i) After a determination that no other contract is suitable, and
- (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and

resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a *brand name* product instead of allowing *an equal* product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services,

geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a *brand name or equal* description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures*. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall

U.S. Department of Housing and Urban Development  
COMMUNITY PLANNING AND DEVELOPMENT

Special Attention of:

All Secretary's Representatives

All State/Area Coordinators

All CPD Division Directors

All CDBG Entitlement Grantees

All HOME Coordinators

All HOME Participating Jurisdictions

Notice: CPD 96-05

Issued: October 11, 1996

Expires: October 11, 1997

Cross References: 24 CFR Parts 570 & 92

Subject: Procurement of consulting services by Community Development Block Grant (CDBG) recipients, HOME participating jurisdictions, and subrecipients

PURPOSE

The purpose of this Notice is to provide information and guidance to Community Development Block Grant (CDBG) program recipients, HOME participating jurisdictions, and subrecipients (and for States that have adopted the Federal regulations on procurement referred to herein) on the procedures that should be followed to ensure proper procurement of goods and services. The Notice places particular emphasis on the procedures to be followed to ensure that professional service providers or consulting services are properly procured.

BACKGROUND

An audit report issued by the Office of Inspector General (OIG) in March 1994, found a variety of deficiencies in the procurement of consulting services by CDBG recipients. Among the problems identified in the procurement of such services were that (1) cost analyses were not being performed, (2) competition was often not free and open, (3) contract services were being paid for before the contract was signed or after the contract had expired, (4) work required under contracts often was not properly performed or delivered, and (5) maintenance of a contract administration system was often lacking.

As a result of this audit, the OIG recommended that the Office of Community Planning and Development issue a Notice to CDBG recipients and subrecipients on the need for compliance with the applicable CDBG procurement regulations with respect to the procurement of consulting services.<sup>1</sup>

DGBE: Distribution: W-3-1, Special (All CDBG Entitlement Grantees; all HOME Participating Jurisdictions)

<sup>1</sup> For existing guidance on distinguishing between the use of procurement contracts and subrecipient agreements as a means of carrying out eligible CDBG activities, recipients and subrecipients should refer to HUD's Guidebook for Grantees on Subrecipient Oversight - Managing CDBG, which is part of HUD's Subrecipient Management Training materials issued August 1993. For guidance in carrying out eligible HOME activities, HOME participating jurisdictions should refer to 24 CFR 92.504 and 92.505.

important that those responsible for ensuring the integrity of the process exercise the utmost in good judgment when faced with such situations. Often, the only solutions to such situations is for the personnel of the recipient or subrecipient to abstain from any decision-making that would directly, and perhaps indirectly, impact on the final selection of the professional service provider.

(NOTE: The conflicts of interest discussed here pertain to conflicts under the procurement regulations in Parts 84 and 85. The CDBG and HOME conflict of interest regulations at 24 CFR 570.611 and 92.356, respectively, pertain to all nonprocurement cases not covered by Parts 84 and 85.)

## SECTION II. METHODS OF PROCUREMENT

Recipients and subrecipients may use different methods of procurement to obtain consultant services.

### A. Requests for proposals

24 CFR 85.36(d)(3), Procurement by competitive proposals, provides that "the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (ii) Proposals will be solicited from an adequate number of qualified sources,
- (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered."

24 CFR 84.44 provides that nonprofit recipients "shall establish written procurement procedures. These procedures shall provide for at a minimum, "that the following criteria apply:

- (1) "Recipients avoid purchasing unnecessary items.
- (2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.
- (3) Solicitations for goods and services provide for all of the following:

24 CFR 84.45 states that "some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

Guidance for implementation:

As provided in the regulations identified above, recipients and subrecipients must perform their own cost or price analysis for every procurement action for consulting services, including contract modifications or change orders. The method and degree of analysis depends on the facts related to each procurement, but as a starting point, the recipient/subrecipient must make independent estimates before receiving bids or proposals.

- a. Price analysis is the process of examining and evaluating a proposed price without examining its separate cost elements and proposed profit. As price analysis is associated with the sealed bid method of procurement, which is not the preferred approach to procuring professional services, the need to conduct a price analysis for such services will be limited. However, where the need arises to conduct a price analysis for consulting services, approaches that can be used to determine if a proposed price is fair and reasonable include:
  - I. A comparison of the proposed prices received in response to the solicitation;
  - ii. A review of historical/previous prices proposed against current prices proposed for the same or similar items;
  - iii. A comparison with published prices or market prices;
  - iv. A comparison with internal, independent estimates;
  - v. A comparison of detailed price information to assess the overall price (which may involve use of cost principles as general guidance in determining price reasonableness).
- b. Cost analysis differs from price analysis in that it is the review and evaluation of the separate elements of cost and proposed profit, and the reasonableness of those estimated costs of performance. Cost analysis is necessary when cost or pricing data are required, as well as when adequate price competition is lacking (e.g., use of non-competitive procedures), for sole source procurements, or when price analysis alone is insufficient to ensure the proposed price is reasonable. Cost analysis is also required for contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. Approaches to cost analysis and ensuring that proposed costs represent accurate projections include:

- I. Verification that costs submitted by the offeror comply with applicable cost principles, including that direct and indirect costs are allowable and allocable, as well as reasonable;
- ii. A comparison of the offeror's proposed costs with internal, independent estimates;
- iii. A comparison of historical/previous actual costs from the offeror, or previous cost estimates from the offeror or from other offerors, with the current/proposed costs for the same or similar items;
- iv. A comparison of proposed cost items with published catalogue prices, market costs, etc.

In addition to evaluating such factual data on costs, cost analysis should also consider the judgmental factors used by the offeror to arrive at the estimated costs that were submitted, i.e., what judgmental factors and methods (mathematical or other) were used in projecting the data submitted in the proposal. This part of the cost analysis should ensure that the factual data presented reasonably reflects the need(s) identified in the solicitation.

In carrying out their responsibilities in the performance of price and cost analysis, recipients and subrecipients are to follow the provisions of OMB Circulars A-87 and A-122, as applicable.

## 2. Contract price and profit

In accordance with 24 CFR Section 85.36(f)(2), recipients and subrecipients will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see 24 CFR 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

24 CFR 84.44 states that the type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. Similar to Part 85, Part 84 provides, the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of