

TITLE 10

COMMUNITY DEVELOPMENT

PART 1

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5

COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER A

GENERAL PROVISIONS

RULE §5.10

Procurement Standards

DRAFT

(a) Procurement procedures must meet minimum guidelines, according to Office of Management and Budget (OMB) Circulars A-87, A-102, A-110, A-122 (as applicable), the Uniform Grant Management Common Rule, Texas Government Code, Chapter 783, and 10 CFR Part 600 (Financial Assistance Rule).

(b) All subrecipients including non-profits must comply with all of the referenced statutes and regulations listed in subsection (a) of this section. In case of any conflict between the OMB Circulars or federal laws and state laws involving federal funds, the federal law or OMB Circulars will prevail.

(c) Additional Department requirements are:

(1) Small purchase procedures:

(A) This procedure may be used only on those services, supplies, or equipment costing in the aggregate of \$25,000 or less. For Emergency Shelter Grant Program (ESGP), the threshold is \$500 and more per unit;

(B) Subrecipient must establish a clear, accurate description of the specifications for the technical requirements of the material, equipment, or services to be procured; and

(C) Subrecipient must obtain a written price or documented rate quotation from an adequate number of qualified sources. An adequate number is, at a minimum, three different sources.

★(2) Sealed bids:

(A) Subrecipient must formally advertise, for a minimum of three (3) days, in newspapers or through notices posted in public buildings throughout the service area. Advertising beyond the subrecipient's service area is allowable and recommended by the Department. The advertisement should include, at a minimum, a response time of fourteen (14) 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; and

(B) When advertising for material or labor services, subrecipient 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 (4) 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 (5) years.

(3) Competitive proposals:

(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 (14) days before the RFP is due. The due date must be stated in the advertisement; and

(B) The time period for services shall be one year, plus four (4) additional years at a maximum.

(4) Non-competitive proposals:

- (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; and
- (C) After solicitation of a number of sources, competition is determined inadequate.

(5) Required contract provisions shall include the following contract provisions or conditions in procurement contracts or subcontracts:

- (A) Contracts in excess of \$25,000 shall include contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach the contract terms, and provide for such remedial actions as may be appropriate;
- (B) All contracts in excess of \$25,000 shall include suitable provisions for 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 circumstances beyond the control of the subrecipient;
- (C) Contracts shall include a provision with regard to independent subcontractor status to hold harmless and indemnify subrecipient 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;
- (D) Contracts shall include a provision regarding conflict of interest. Subrecipient's employees, officers, and/or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors, or potential subcontractors; and
- (E) Contracts shall include a provision to prevent fraud and abuse.
 - (i) Subrecipient shall establish, maintain, and utilize internal control systems and procedures sufficient to prevent, detect, and correct incidents of waste, fraud, and abuse in all Department funded programs and to provide for the proper and effective management of all program and fiscal activities funded by this contract. Subrecipient'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.
 - (ii) Subrecipient shall give Department complete access to all of its records, employees, and agents for the purpose of monitoring or investigating the program. Subrecipient shall fully cooperate with Department's efforts to detect, investigate, and prevent waste, fraud, and abuse. Subrecipient shall immediately notify the Department of any identified instances of waste, fraud, or abuse.
 - (iii) Department will notify the funding source upon identification of possible instances of waste, fraud, and abuse or other serious deficiencies.
 - (iv) Subrecipient 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.

(F) Contracts shall include a provision to the effect that any alterations, additions, or deletions to the terms of the contract which are required by changes in federal law and regulations or state statute are automatically incorporated into the contract without written and administrative code amendment hereto, and shall become effective on the date designated by such law and or regulation; and any alterations, additions, or deletions to

the terms of the contract shall be amended hereto in writing and executed by both parties to the contract.

(G) Contracts shall include the following provision assuring legal authority to sign the contract.

(i) Subcontractor represents that it possesses the practical ability and the legal authority to enter into the contract, receive and manage the funds authorized by the contract, and to perform the services subcontractor has obligated itself to perform under the contract.

(ii) The person signing the contract on behalf of the subcontractor warrants that he/she has been authorized by the subcontractor to execute the contract on behalf of the subcontractor and to bind the subcontractor to all terms set forth in the contract.

(iii) Department shall have the right to suspend or terminate the contract if there is a dispute as the legal authority of either the subcontractor or the person signing the contract to enter into the contract or to render performances thereunder. Should such suspension or termination occur, the subcontractor is liable to the subrecipient for any money it has received for performance of provisions of the contract.

Source Note: The provisions of this §5.10 adopted to be effective March 12, 2009, 34 TexReg 1555

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