

FREQUENTLY ASKED QUESTIONS (FAQS)

The following questions and corresponding answers were selected from [HUD Exchange's FAQ Search Page](#).

Does a subrecipient have to procure for construction to build a public building if CDBG funding was used solely to acquire land? If yes then can it sole source the contractor, if the contractor was already competitively procured and awarded the sole rights to build public buildings from the state?

Per HUD: CDBG subrecipients are required to follow federal, state and local procurement requirements when choosing a construction contractor, regardless of whether a grantee competitively procured contractors independently. For subrecipients the procurement rules are found at 84.40-84.48; 24 CFR Part 85.36 applies to grantees. They are cross referenced in the CDBG regulations at 24 CFR 570.502. Even though CDBG funds are being used in the acquisition, procurement requirements apply to the project itself which is a public facility. The subrecipient cannot simply select the contractor procured by the state. As states and units of general local government are subject to different procurement standards, there is no presumption that a state agency's procurement standards will conform to 24 CFR 85.36(b). The selection of the independent contractor providing common services is usually based on price (i.e., the lowest quote meeting specifications wins the bid). It is not clear whether the State's contractor was selected on that basis. Absent full and open competition consistent with the requirements of 24 CFR 85.36, there is no basis to determine the reasonability of the contract price. Therefore, the subrecipient may not piggyback the state's procurement.

Please also note that federal acquisition requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act are triggered. Documentation of the sale, either voluntary or involuntary, must be in the project file. If you need more information on relocation, the [HUD Handbook 1378](#) might be useful.

Can local governments procure services from the state's list of construction contractors? The state uses a sealed bid process to procure contracts.

Per HUD: HUD lays out the responsibilities that grantees must meet when conducting a procurement using federal funds in 24 CFR 85.36. While the procurement standards encourage intergovernmental agreements for the procurement of common goods and services (defined as standard commercial equipment, materials, supplies and services readily obtainable on the open market through conventional commercial marketing channels), procurement activities by CDBG entitlement grantees must still be conducted in accordance with the requirements of 24 CFR 85.36(b), specifically requiring grantees to follow their own procurement policies and procedures that meet all specified federal minimum standards.

Therefore, a grantee can select a contractor procured by the state only if the procurement complies with the grantees own procurement policies and procedures and the procurement also meets all requirements of the federal standards specified in 24 CFR 85.36 and meets federal

requirements like Davis-Bacon. The bids have to be adjusted for local circumstances and can be made a condition of the award. This is still faster and easier than running a separate process, which is what 85.36(b)(5) is trying to encourage. [Notice 96-05](#) provides additional guidance on procurement issues.

Are we able to piggyback on an existing contract for the purchase of equipment less than \$100,000? City regulations allow piggybacking and the contract being piggybacked on has been procured through a competitive process which included federal procurement language.

Per HUD: Piggybacking in this case refers to using the results of another CDBG grantee's procurement for equipment after-the-fact, rather than the City conducting its own procurement. A grantee may not piggyback another grantee's procurement of a contract for goods and services. HUD lays out the responsibilities that grantees must meet when conducting a procurement using federal funds in 24 CFR 85.36. While 85.36 encourages intergovernmental agreements for the procurement of common goods and services (defined as standard commercial equipment, materials, supplies and services readily obtainable on the open market through conventional commercial marketing channels), procurement activities by entitlement grantees must still be conducted in accordance with the requirements of 24 CFR 85.36(b). As States and units of general local government are subject to different procurement standards, there is no presumption that a state agency's or unit of government's procurement standards will conform to 85.36(b). The grantee must follow the procurement requirements, in accordance with 24 CFR 85.36(b), even if in the end the result is that the same contractor is selected.

Following a formal sealed bid advertisement, an infrastructure project had only one contractor submit a bid for the project. Under a sealed bid procurement process, does more than one bid need to be received before proceeding with the project?

Per HUD: When only one bid is received in response to an invitation for bids, the grantee needs to carefully review and evaluate the relevant circumstances in making a decision about how to proceed. The review should include examination of the specifications to consider if they were sufficiently clear and not unduly restrictive, the process used to solicit adequate competition so that it could have been reasonably assumed that more than one bid would have been submitted, whether the price of the bid received is fair and reasonable, and if the bid is otherwise in accordance with the invitation for bids. This determination should be placed in the project file. Based on this review, it may be concluded that the work should be re-bid, with modifications as appropriate, using the competitive proposal method of procurement, or that it is appropriate to accept the one bid received. All of the requirements of 24 CFR 85.36(d)(4) must be met for procurement by noncompetitive proposals if the one bid received is accepted. In addition, the municipality must maintain documentation on file that shows its unsuccessful attempts to conduct procurement by sealed bid and competitive proposals.

In order to determine that the price is fair and reasonable, the grantee should compare the bid price to the in-house cost estimate and past prices paid for the same or substantially similar item(s). The grantee should also try to obtain information from the marketplace if that was not

already done in developing the estimate of cost. The grantee's attorney should also review the matter to determine if one bid can be accepted under state and/or local law or if the grantee must re-bid. Additional information on procurement requirements may be found at 24 CFR 85.36 and 24 CFR 84.40-84.48.

Can a request for proposals (RFP) or a request for qualifications (RFQ) be used on CDBG project?

Per HUD: Grantees may use the request for quotations when carrying out procurement by small purchase procedures. With this method, price or rate quotations are obtained from more than one source for the procurement of services supplies, or other property that does not cost more than \$100,000. Requests for quotations may also be used for sealed bid procurements where the contract will be awarded to the firm whose bid, conforming with all of the material terms and conditions of the invitation for bids, is the lowest in price. Requests for proposals are used when carrying out procurement by competitive proposals. Regulations on applicable provisions regarding procurement are 24 CFR Sections 85.36 (grantees) or 84.40 to 84.48 (subrecipients). In addition to federal regulations, most local governments have laws and regulations regarding procurement. Each entity receiving CDBG funds should be aware of local laws that may affect procurement policies and procedures.

The County signed an agreement with a sub-recipient (a municipality) to use CDBG funds to construct a recreation center. If the sub-recipient already has or is going to obtain the service of an architect to design and oversee the construction of this center and is using its own non-CDBG funds to pay for the architect's service, does CDBG procurement policy apply in the obtaining of this architect's service?

Per HUD: Grantees and subrecipients are required to follow the procurement standards at 24 CFR 85.36 and 84.40-48, respectively. Specifically, since the subrecipient is a unit of general local government, it is required to follow 24 CFR 85.36, which requires all procurement transactions to be conducted in a manner to provide, to the maximum extent practical, open and free competition. Since this is a federally assisted CDBG activity, the procurement of the architectural services must meet the requirements at 24 CFR 85.36, even though a portion of the activity is paid from local funds. Additional information on federal procurement standards may be found in [CPD Notice 96-05](#).

Please clarify if a Participating Jurisdiction (PJ) is permitted to utilize a competitively bid continuing services contract (for professional services such as engineering, surveying or architectural services) for on-going CDBG activities, during the life of the contract, that has been put in place for a specific period, such as three years? Following, the 3 year contract the on-going professional services contract would again be put out for competitive bids.

Per HUD: Although 24 CFR 85.36 does not mention the renewal of contracts, CPD Notice 96-05, page 3, last paragraph states that grantees are not allowed to renew or extend a contract without further competition. In addition, if professional services are required for a longer period of time than the contract specifies, those services must be secured through a new procurement.

Therefore, if a grantee has a contract with a firm for professional services such as engineering, surveying or architectural services, and it wants the firm to continue to do so beyond the time period specified in the original procurement and contract (e.g. three years), the additional year(s) of services must be re-advertised and there must be full and open competition for the work. We also recommend that you review your state and local laws regarding procurement that may apply in this situation.

If you are in the midst of a project and remove a prime construction contractor, what are the options for completing the work so that a nonprofit owner is in compliance with the federal requirements?

Per HUD: Federal procurement standards require all contracts in excess of \$100,000 contain suitable provisions for termination, including the manner by which termination shall be effected and the basis for settlement. In addition, contracts must 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 contractor. Please reference 24 CFR 84.48. Depending on the situation, you may wish to consider legal action against the contractor since they were removed for cause.

Must a contractor be registered at sam.gov and have a DUNS number to check for debarment?

Per HUD: The General Services Administration (GSA), a federal agency, is required by the Federal Acquisition Regulation (FAR) to compile and maintain a list of parties debarred, suspended, or disqualified by federal agencies. Contractors as well as recipients of federal financial assistance must be registered at Sam.gov. To determine if a proposed contractor is debarred, grantees should check the [federal SAM database](#). Active registration in SAM is required to apply for an award and for HUD to make a payment. In addition to checking the name of the contracting firm, the name of the president and owner of the firm should also be checked. Staff should also review any state and local debarment lists. Website printouts must be placed in the file.

Per the SAM User Guide, the No Active Exclusions field on the SAM Entity summary indicates whether the entity has a current debarment. SAM.gov will check the exclusions list for the DUNS number of your entity and indicate whether any exclusion records exist. If an active exclusion record exists for your entity, this question will default to "Yes," meaning that the contractor is debarred. No Record Found means that the entity is not registered or has let its registration lapse. The entity should ensure that the email address is current in SAM.gov so that when automated reminders are sent to renew registration each year that this reminder does not go into spam due to an obsolete email address.

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