



# Procurement and Contract Administration

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT AND TRAINING ADMINISTRATION

**ARRA GREEN JOB AND HEALTH  
CARE / EMERGING INDUSTRIES  
NEW GRANTEE POST AWARD  
FORUM**

JUNE 15-16, 2010 | SAN FRANCISCO, CA



# Procurement

---

- Process to obtain goods and services
- 29 CFR 97.36
  - States & other governmental grantees
- 29 CFR 95.40-48
  - Nonprofits, commercials, higher education, & hospitals
- Applies to grantees and subgrantees
- Full & open competition



# Procurement Standards

---

- Written procedures
- System to ensure performance
- Written code of conduct
- Procedures to review procurements
- Process to promote use of intergovernmental agreements/common goods & services



# Procurement Standards

---

- Cost or price analysis
- Awards only to responsible parties
- Documentation of award
- Settlement process and protest procedures
- Use of small businesses, minority- & woman-owned businesses (Part 95 only)



# Procurement Methods

---

- Fair and open competition
  - ⦿ 29 CFR 97.36(c) & 95.43
- Methods – 29 CFR 97.36(d)
- No methods specified in Part 95
  - ⦿ Follow methods of Part 97
  - ⦿ No prior approval for small purchase procurements



# Small Purchase Method

---

- Federal threshold – \$100,000
- Informal method – primarily goods
- Rate comparisons
- Price is primary consideration



# Sealed Bids Method

---

- Complete specification of goods & services
- Usually requested through an Invitation for Bid (IFB)
- At least two bidders
- Award based primarily on price



# Competitive Proposals

---

- More than one bidder
- Price is not primary consideration
- Use of a Request for Proposal (RFP)
  - ⊙ Publicized
  - ⊙ Method to conduct technical evaluation
  - ⊙ Awards based on price and program factors
  - ⊙ Bids solicited from a number of providers
- Fixed-price or cost reimbursement



# Non-Competitive (Sole Source) Proposals

---

- Only if other methods infeasible
- Available from one source
- Public emergency precludes competition
- Awarding agency authorized
- Competition determined inadequate



# Non-Competitive Proposals

---

- Cost analysis required
  - Verification of cost data
  - Evaluation of costs & profit
- Profit separately negotiated
- Fixed-price or cost reimbursement



# State Grantee's Solicitation Process

---

- States should follow their own procurement process (usually State Procurement Office)



# Other Grantees' Solicitations

---

- Determine to type of solicitation
  - RFP, Sealed Bid, etc.
- Establish a due date for proposals to be received
- Develop the scope of work
- Develop the Criteria plus assign a range of points for each criteria



# History of Procurement

---

- Record retention

- All minutes, notes, instructions, processes must be kept in accordance with the DOL record retention requirements
  - 3 years after submission of the final expenditure report or settlement of all issues
  - (the later of the two)
  - Property – three years after disposition
  - Cost allocation plans



# History of Procurement

---

- Records shall include names of individual panelist who rated the proposals
- The rating sheets
- Recommendations and ultimate selection
- All proposals
- Conflict of interest statements



# Other Grantees Solicitation Process

---

- Must have written protest procedures
- Must have a process for notifying successful and unsuccessful respondents
  - Can include letting unsuccessful bidders know why they were not considered
- Develop bilateral grant/award documents



# Contract Clauses

---

- Agreements
  - Fixed-price or cost reimbursement
- Every agreement must contain clauses
- 29 CFR 97.36(i)
- 29 CFR 95.48
- 29 CFR Part 95, Appendix A



# Contract Clauses

---

- Breach of contract
- Termination for cause or convenience
- Access to records
- Reporting requirements



# More Contract Clauses

---

- Record retention requirements
- Applicability of regulations
- Audit requirements
- Patent rights, copyrights, rights in data



# The Rest of Contract Clauses

---

- Provisions requiring adherence to
  - EEO requirements of CFR 33 & 37
  - Sections 103/107 of CWH/SSA
  - Clean Air Act, Clean Water Act, & EPA regulations
  - Energy Conservation Act
  - Byrd Anti-Lobbying Amendment (Part 93)
  - Debarment & Suspension requirements (Part 98)



# Sub-recipient or Vendor

---

Sub-recipient:

- Has responsibility for programmatic decision making
- Determines Eligibility
- Has performance measured against objectives of the program



## Sub-recipient Continued

---

- Has responsibility for adherence to applicable Federal program compliance requirements (regulations, statute, other issuances)



# Vendor

---

- A dealer, distributor, merchant, or other seller who provides goods or services required for the program
- Provides goods and services within normal business operations
- Provides similar goods or services to many different purchasers



## Vendor Continued

---

- Operates in a competitive environment
- Provides foods or services to the operation of the program
- Is not subject to the Federal compliance requirements of the program



# Making the Determination

---

- Take into account all of the characteristics related to the type of provider
- It is not the label on the award document, e.g., contract, sub-grant or sub-contract
- No one factor should be taken in isolation



# Making the Decision Continued

---

- Under no circumstances should a designation of vendor be made if the following conditions are met:
  - There is a financial or performance requirement related to eligibility or selection of participants
  - The designation must relate to the type of product or service provided



# Indicators of Sub vs. Vendor Relationships

Factor	Vendor	Sub-recipient
Activity	Sell Deliverables (goods or services)	Provides services
Assistance arrangement	Buyer-seller	Financial Assistance to operate a program



# Indicators of Sub vs. Vendor Relationships

---

Factor	Vendor	Sub-recipient
Control	Control is outcome focused	Control is in process
Development Costs	Absorbed	Controlled
Closeout Package	Final Invoice	Comprehensive



# Indicators of Sub vs. Vendor Relationships

---

Factor	Vendor	Sub-recipient
Purpose of award	To provide specific goods and services	To carry out a program goal
Receipt of funds	Number of items delivered	Cost incurred
Type of market	Sale within normal business operation; existing product tailored to the program solicitation	Customized to meet specific program purposes