

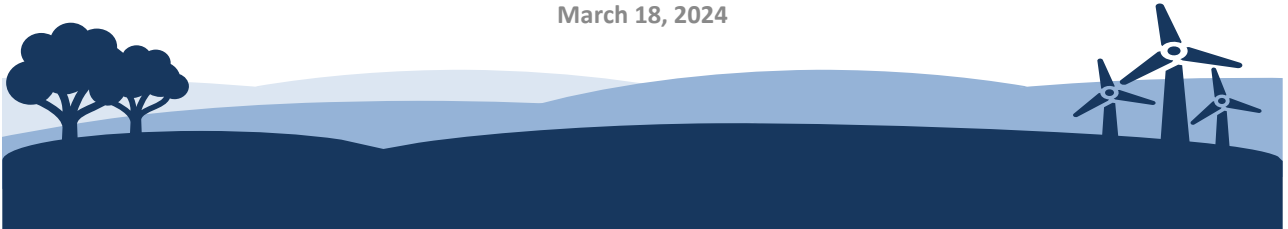


Effective Procurement Fulfilling Requirements and Avoiding Conflict of Interest

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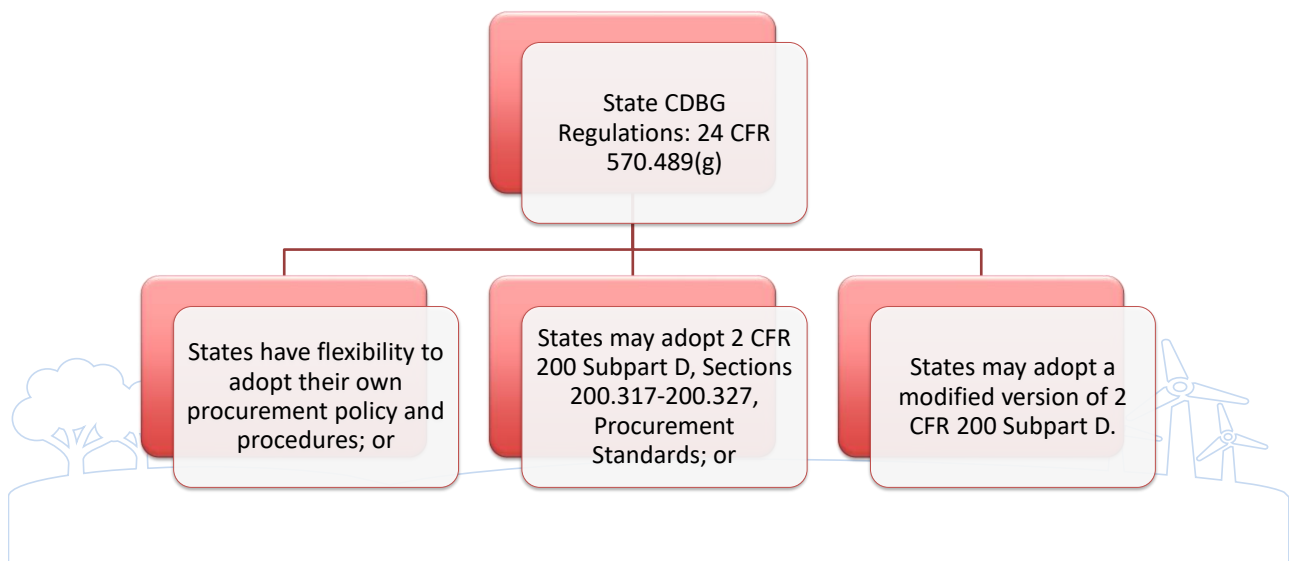
HUD State and Small Cities Division, CDP Specialist

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Procurement Requirements



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CDBG Regulation Applicability



CDBG Regulations

Grantees must have documented procurement policies and procedures that are consistent with:



State Policies and Procedures



UGLG Policies and Procedures



Other grant program requirements when providing cost share



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Full and Open Competition

Benefits

- Prevents fraud, waste, and abuse
- Increases visibility and transparency
- Receive reasonable prices from qualified contractors
- Provides opportunities for all responsible contractors

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What to Avoid

- Requiring unnecessary experience or excessive bonding.
- Specifying only a brand name product.
- Noncompetitive contracts to consultants on retainer.
- Be aware of noncompetitive pricing practices between firms or affiliated companies.
- Any arbitrary action in the process.



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Standards of Conduct

HUD expects a state, when contracting under a HUD award, to ensure that procurement transactions are conducted with impartiality and without preferential treatment.

States and local governments must have written standards of conduct covering conflicts of interests governing the actions of employees engaged in the selection, award and administration of contracts.

24 CFR 570.489(g) and 570.489(h)



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Conflict of Interest

Procurement 24 CFR 570.489(g)

Procurement policies and procedures should include standards of conduct governing employees engaged in the award or administration of contracts.

Other Conflicts of Interest 24

CFR 570.489(h) States should ensure consultants avoid conflict of interests especially if consultants are making financial recommendations and or decisions regarding grants.

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Types of Conflict of Interest



Real Conflict of Interest

Financial Interest

Apparent Conflict of Interest

Organization Conflict of Interest

- circumstances of impaired objectivity
- unequal access to information
- biased ground rules

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7 Keys to Handling Conflicts of Interest

HUD OIG Integrity Bulletin Summer 2016

1. Know the requirements
2. Train employees
3. Create procedures to document compliance
4. Implement the regulations
5. Know the consequences
6. Request an exception
7. Get help from local field office



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Public Corruption

Public corruption occurs when a public official misuses their position for personal benefit. It is against the law for Federal, state, or local Government employees to ask for or receive anything of value (gifts) in exchange for an official act or engage in undisclosed self-dealing.

OIG Fraud Bulletin Public Corruption
January 19, 2023

Indicators of potential public corruption

- Irregular contract activity
- Use of no bid or sole source contracts
- Excessive or illogical use of “consultants”
- A public official living beyond their means
- Poor or insufficient financial controls such as lack of separation of duties

Report Fraud

HUD OIG Hotline at 1-800-347-3735 or visit us at <https://www.hudoig.gov/hotline>.

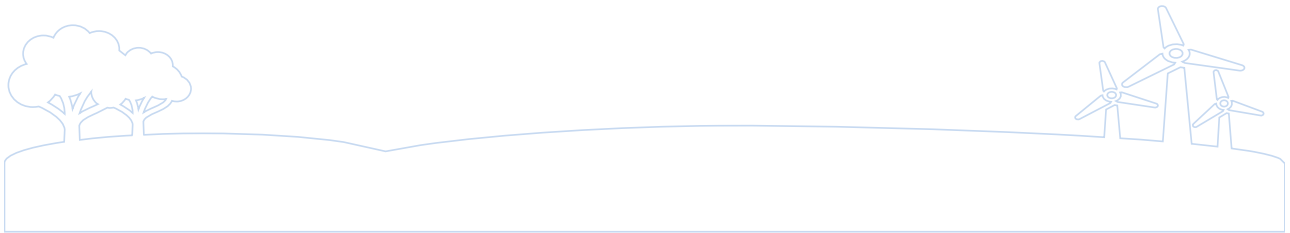


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Non-competitive procurement

- Procurement by Micro-purchase
- Single Source
- Public Emergency or Exigency
- Exceptions
- Inadequate Competition



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HUD Conflict of Interest Exception

The state evaluates and decides the outcome of a UGLG or other recipient on behalf of their employees or agents

24 CFR 570.489(h)

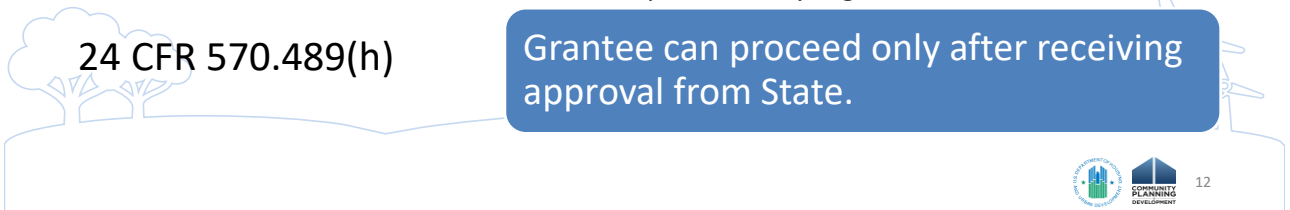
Written request should include:

- A public disclosure of the conflict (include how the disclosure was made)
- An opinion of the recipient's attorney that they exception does not violate State or local law.

State will review to determine if threshold requirements are met

- The circumstances must fall within the exception criteria permitted by regulations

Grantee can proceed only after receiving approval from State.



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Factors to be considered for exceptions

1. Provides significant cost benefit or an essential degree of expertise
2. Competition was afforded
3. Impact to a member of a group or class of low- or moderate-income persons
4. Recusal from decision making role
5. Timely recusal action was taken
6. Hardship
7. Any other relevant considerations

24 CFR 570.489(h)(5)



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Inadequate Competition

Competition is “inadequate” when a non-state entity has complied with all procurement under grant standards and receives a single offer or bid, a single responsive offer or bid, or no responsive bids or proposals is caused by conditions outside the non-state entity’s control.

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Process to Evaluate Inadequate Competition

Evaluation Questions

- Was the request publicized and/or were an adequate number of firms solicited?
- Why did the firms solicited not submit offers or bids?

Options

Based on this information grantees should consider the following options:

- Cancel the solicitation
- Change the specifications/delivery requirements to allow for more bids or offers
- Re-solicit bids or offers.

If the grantee chooses to move forward with the award without modification, they should document why the restrictive specification or delivery requirement was necessary and could not be modified.



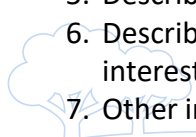
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Non-competitive Procurement Justification

Suggested Elements of Justification

1. Citation from state regulation (or 2 CFR 200, if applicable) justifying noncompetitive procurement (such as single source, state authorized noncompetitive proposals in response to written request, competition deemed inadequate).
2. Brief description of service/product being procured and expected dollar amount.
3. Explanation of why non-competitive procurement is necessary.
4. State how long the non-competitive contract will be used.
5. Describe the steps taken to determine full and open competition could not be met.
6. Describe any known conflicts of interest and efforts made to identify conflicts of interest before the noncompetitive procurement occurred.
7. Other information justifying use of a non-competitive procurement.



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Increasing Competition

- Increasing number of advertisements and length of time for ads
- Create a vendor list
- List bids on local and state websites
- Cooperate with nearby entities
- Build relationships with procurement officials
- Network with support organizations (associations of governments, school boards)
- Increase procurement technical assistance and expand outreach to rural vendors

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Are UGLG procurement procedures current?

UGLG procedures may need to be reexamined to encourage vendors to prepare offers.

- leverage technology
- clear and consistent procedures
- reasonable bonding requirements
- streamlined reporting and invoicing
- update threshold for small procurements

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Outreach Activities



Take advantage of programs the state may already have (such as Small Business Administration) and resources to help small businesses.



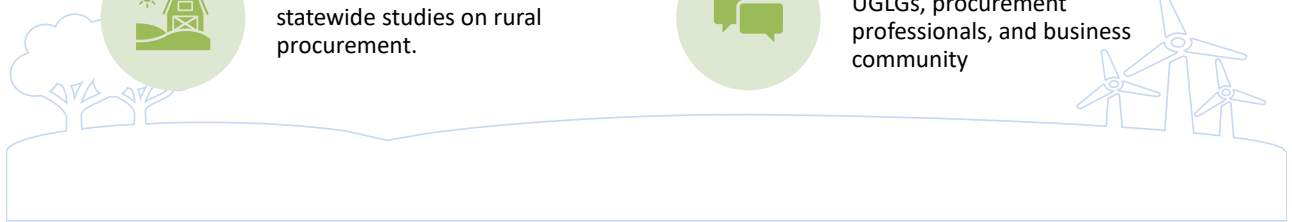
Tailor technical assistance and resources for the type of procurement being made under your CDBG program.



Review recommendations of statewide studies on rural procurement.



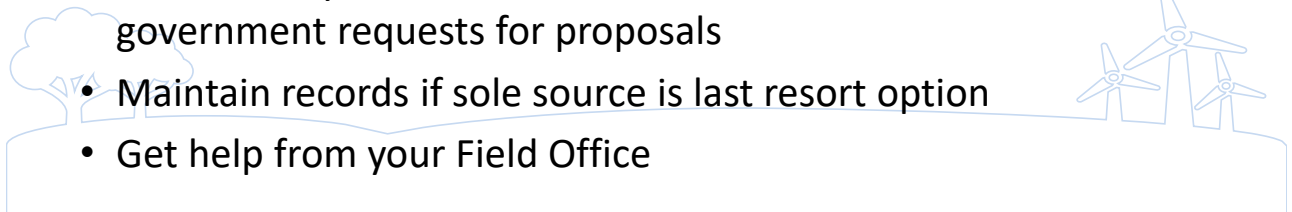
Encourage dialogue between UGLGs, procurement professionals, and business community



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Key Takeaways

- Report fraud and encourage your UGLGs to report fraud
- Know the requirements and provide technical assistance to UGLGs
- Evaluate barriers and update policies and procedures to encourage participation of rural firms
- Increase ways rural firms can become aware of rural government requests for proposals
- Maintain records if sole source is last resort option
- Get help from your Field Office



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