

# Chapter 6

## *Procurement & Contract Administration*

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### **6.1 GENERAL**

(Revised 01/06)

This chapter highlights the more significant procurement standards that must be adhered to when purchasing goods or services for OTS grants. Specific requirements are provided for sole source procurements, procurement records, contractual services, contract management, and contracting with non-profit organizations. In general agencies must follow the same policies and procedures it uses for procurements from its non-federal funds provided they conform to applicable federal laws and standards.

### **6.2 FEDERAL LAWS AND STANDARDS**

(Revised 06/08)

The following contain the federal laws and standards that must be adhered to when procuring goods or services for OTS grants:

- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.
- Title 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements.
- Title 49 CFR, Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations.
- Title 49 CFR, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- Title 41 CFR, Part 105-71, Uniform Administrative Requirements for Grants and Cooperative Agreements (available at web site <http://www.access.gpo.gov/>).
- Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions (OMB circulars are available at website <http://www.whitehouse.gov/omb>).
- OMB Circular A-122, Cost Principles for Non-profit Organizations.
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.
- Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, A Guide for State, Local and Indian Tribal Governments, Implementation Guide for OMB Circular A-87.

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**Note: State agencies must comply with contract and procurement policies and procedures as set forth in the State Administrative and State Contracting Manuals. All other agencies must have copies of established procurement procedures available for audit purposes upon request by OTS.**

#### **6.3 DEFINITIONS**

(Revised 06/08)

##### Applicant Agency

Applicant agency means the government entity, either state or local, to which an OTS grant is awarded and which is accountable for the use of the funds provided. The applicant agency is the entire legal entity even if only a particular component of the agency is designated to handle the grant. Also referred to as the grantee.

##### Community Based Organization (CBO)

Non-governmental entities which are organized to work together on a community-based issue, need or problem; they are often non-profit corporations (26USC501.C.3). Generic term to indicate any local or regional group that is not an official, government agency.

**Note: To receive OTS funding through an applicant agency, a CBO must be a legal entity registered with the Secretary of State.**

#### **6.4 PROCUREMENT STANDARDS**

(Revised 01/06)

All procurement and contractual transactions will be conducted in a manner providing full and open competition consistent with the standards of 49 CFR Section 18.36. Sole source procurement or contracting is discouraged because it is inconsistent with a policy of “full and open competition.”

When procuring goods or services with grant funds, applicant agencies must also ensure costs are reasonable. A cost is reasonable if 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 following must also be taken into consideration in determining the reasonableness of a given cost:

- Is the cost of a type generally recognized as ordinary and necessary for the performance of the governmental agency?
- Does the cost exceed the market price for comparable goods or services?
- Were the restraints or requirements imposed by such factors as sound business practices and arms length bargaining used?

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- Did the individuals concerned act with prudence in the circumstances considering their responsibilities regarding the use of public funds?
- Were there significant deviations from the established practices of the applicant agency, which may unjustifiably increase OTS's cost?

#### **6.5 PROCUREMENT RECORDS**

(Revised 01/06)

Applicant agencies must also maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following:

- A rationale for the method of procurement and selection of contract type.
- Written selection procedures and documented reasons for rejections.
- The basis for the contract price.

**Note: Procurement documentation must be made available for audit purposes upon request from OTS.**

#### **6.6 SOLE SOURCE PROCUREMENTS**

(Revised 01/06)

Purchases or award of contracts by noncompetitive processes may be used only when small purchase procedures, sealed bids, or competitive proposals are infeasible and one of the following applies: [Reference: 49 CFR 18.36(d) (4)(i)].

- Goods or services are only available from a single source.
- Public exigency or emergency for requirement will not permit a delay resulting from competitive solicitation.
- After solicitation of a number of sources, competition is determined inadequate.

**Note: Sole source approvals must be in accordance with the agency's procurement and contracting directives regarding non-competitive procurement and contracting.**

#### **6.7 SOLE SOURCE RECORDS**

(Revised 01/06)

Procurement records supporting a sole source approval must be consistent with applicant agency's procedures but at a minimum must contain the following:

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- Justification why the purchase/service cannot logically and reasonably be made through a competitive bidding process including consequences if not approved.
- A list of the vendor's/contractor's unique qualifications, experience, etc.
- A cost analysis, i.e., verifying the proposed cost data, the projections of data, and the evaluation of the specific elements of cost is necessary, unless 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.

#### **6.8 CONTRACTUAL SERVICES**

(Revised 09/07)

If approved as part of the grant agreement, and after a consultant and/or subcontractor is selected in accordance with all requirements of the Grant Agreement, the consultant, contractor and/or subcontractor are subject to all conditions and certifications of the Grant Agreement and 49 CFR Part 18 and/or CFR Part 19. Specifically all terms and conditions as outlined in 49 CFR Section 18.22 Allowable Costs.

#### **6.9 PRE-AWARD AUDIT REVIEW**

(Revised 09/07)

The applicant agency (s) are responsible for conducting pre-award reviews as necessary to determine if the subcontractors will be able to perform in accordance with the terms, conditions, and specifications of their contract and in accordance with all applicable state and federal requirements. A pre-award review should be conducted under the following circumstances:

- Any subcontract with a non-profit corporation or community-based organization that is over \$150,000. However, if the grantee can document prior successful history with the sub contractor, the pre-award requirement may be waived.

The review should include:

- A determination of the propriety of amounts set forth in the cost proposal.
- A determination of the adequacy of the contractor's system to segregate and accumulate reasonable allocable and allowable costs for charges to the proposed contract.
- A determination that the agreement complies with all applicable state and federal procurement criteria.

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#### **6.10 CBO'S AND NON-PROFIT CORPORATIONS/ORGANIZATIONS**

(Revised 01/06)

Contractual agreements with non-profit corporations and community-based organizations must be on a cost reimbursement basis and include detailed budgets with budget narratives descriptive enough to limit misinterpretation of allowable cost items. In addition, contract language must stipulate a requirement to submit source documentation supporting actual costs billed with invoice such as:

- Itemized receipts/vendor invoices.
- Timesheets clearly indicating grant time and all other non-grant funded time for which personnel are compensated.

#### **6.11 MEMORANDUM OF UNDERSTANDING (MOU)**

(Revised 06/08)

A MOU is an agreement document between local governments for the purpose of completing an OTS grant of mutual interest. MOU's are acceptable if implemented for AVOID or similar programs that reimburse specific personnel services and utilize existing personnel. At minimum the MOU should include:

- Contract number or date of initiation.
- Identification of both agencies.
- Avoid or similar program reference.
- Term for the performance or completion of the contract (specific start and end dates).
- Cost - the MOU must clearly express the *maximum amount to be paid*, estimated level of personnel, and the salary/overtime and benefit rates for each.
- Service - the work or service to be performed, including specific activity periods if known.
- Reporting requirements specify reporting requirements if not being performed by the applicant agency.
- Signature, printed name, and title of a person representing each agency who is authorized to bind that agency.

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### **6.12 CONTRACT MANAGEMENT RESPONSIBILITY**

(Revised 09/07)

The applicant agency is responsible for the management of all contracts issued using OTS funds and must:

- Ensure contractor's compliance with contract provisions.
- Ensure services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract.
- Ensure that all work is completed and accepted by the agency before the contract expires.
- Assess and request amendments, renewals, or new contracts as required allowing sufficient time to process, and execute such changes before the contract expires to prevent a lapse in service.
- Ensure that contracts are amended subsequent to any grant agreement revision that affects the contract terms.
- Review and approve invoices for payment ensuring payments are made in accordance with contract terms, costs are budgeted and allowable, and work has been performed.
- Monitor contract expenditures to ensure there are sufficient funds to pay for all services rendered as required by the contract.
- Verify all requirements of the contract are fulfilled before submitting the final invoice.