

# CHAPTER 3

## Financial Management and Administration

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The financial management and administration of CDBG programs is generally regulated by two federal regulations: 24 CFR Part 85 (The Common Rule: Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) and 2 CFR 200 Subpart E Cost Principles (historically referred to as OMB Circular A-87). In addition federal and state audit requirements must be met and are described in OMB Circular A-133.

The financial system should be able to produce the various financial and compliance reports required for efficient grant administration. (See reporting requirements).

This chapter clarifies the requirements contained in these federal circulars. In addition, suggested formats and procedures have been included wherever appropriate.

### **SECTION 1: FINANCIAL MANAGEMENT SYSTEMS**

#### **A. GENERAL REQUIREMENTS:**

Recipients' financial management system must:

1. Provide accurate, current, and complete disclosure of the financial activities funded by CDBG awards and adequately meet the reporting requirements described in Chapter 1, of this manual - "Reporting Requirements". Approved Budgets (Form DCA-7) reflect costs **by activity** to be undertaken, and so do the Requests for Drawdown forms and the Quarterly Report forms. Therefore, financial records should be established and maintained in such a manner as to facilitate the reporting and monitoring of expenditures and obligations by activity.
2. Maintain records that identify clearly and adequately the source and application of funds of all CDBG funded activities.
3. Maintain effective control over and accountability for all funds, property, and other assets, safeguarding these assets and insuring that they are used solely for authorized purposes.
4. Provide comparison of actual expenditures to budgeted expenditures.
5. Include procedures to minimize the time elapsing between the drawdown of funds from DCA and the disbursement of those funds by the Recipients. A period of three working days or less shall be considered acceptable. In addition, advances made by the Recipients to **Secondary Recipients** must conform to the same standards of timing and amount as apply to advances from DCA to Recipients. (See Chapter 1, Section 6, - "Drawdown of Funds" )

6. Provide procedures for ensuring the reasonableness, allocability and allowability of costs in accordance with OMB Circular A-87 and the applicable grant award.
7. Include source documentation to support the accounting records.
8. Provide for audits made by qualified and independent audit firms of management systems and internal control procedures that have been established. An audit shall be conducted annually and in accordance with Chapter 3, Section 2 of this manual "Audit Requirements".
9. Provide for source documents (appropriation ordinances, purchase orders, invoices, journal vouchers, cash receipts, bank deposit receipts, etc.) that support all financial transactions relating to CDBG activities should be filed and maintained.
10. Maintain accounting records that make it possible to identify the source and application of all funds committed to CDBG-supported activities. Local contributions to the program and income applied to the program should also be clearly identified. (See Section 2)
11. Include procedures to ensure that sound internal accounting controls are maintained over financial transactions and that effective control is maintained to safeguard physical assets.
12. Ensure that costs incurred in CDBG activities are allowable only under the following conditions:
  - The award has been properly accepted as described in Chapter 1, Section 1 of this manual.
  - Costs are incurred on or after the date of the Grant Award by DCA (unless pre-agreement cost approval is requested and approved by DCA).
  - Costs for projects or activities (except costs for environmental reviews) are incurred only after all necessary environmental reviews have been completed, and all applicable conditions have been satisfied. (See Chapter 1, Section 2, and Chapter 2, Section 2 of this manual.)
  - Costs are accounted for in accordance with generally accepted accounting principles and are not prohibited by Federal, State or local laws.
  - Costs are authorized in the award made by DCA.
  - Costs are incurred for activities eligible under the CDBG Small Cities Program.
  - All appropriate credits have been applied.

**In order to meet these requirements, the following procedures are suggested.**

## **B. SUGGESTED ACCOUNTING PROCEDURES, RECORDS AND FILING FORMAT**

The accounting issues that your city or county should address to comply with the state and federal requirements include:

- Organization of the accounting system,
- Fund structure and double entry bookkeeping,

- Uniform Chart of Accounts,
- Coding the chart of accounts, and
- Accounting records and files.

### **Organization of the Accounting System**

One individual should be designated to oversee the financial transactions related to CDBG. This individual, who serves as fiscal coordinator, should approve all purchase documents, contract invoices, payroll actions, etc., that affect CDBG funds; however, this person should not perform the disbursing and recording functions which are typically accomplished by the accounting department.

The CDBG accounting system should be designed to maximize internal control. The concept of internal control refers to policies and procedures of your jurisdiction designed primarily to safeguard assets such as cash, inventory, and equipment.

The person designated as fiscal coordinator might be a member of the finance or accounting department or a member of the mayor's or city manager's staff. Where a community development department has been established, a fiscal coordinator may be designated within the department to perform these duties.

### **Fund Structure and Double Entry Bookkeeping**

A separate special revenue fund must be established in conformance with the Uniform Chart of Accounts (H.B. 491) requirements. This fund must be established for any grant with projected expenditures that exceed two percent (2%) of the general fund's budgeted total operating expenditures. CDBG funds should be accounted for within this fund.

Records must also be available to allow for confirmation of required grant match amounts and to support leverage amounts.

Note that a separate, non-interest bearing, checking account for CDBG funds only must also be established. See page 3 of this Manual.

A complete set of general ledger and subsidiary accounts should be maintained for the fund. Accounting within this fund should be conducted on the double entry basis where Debit and Credit balances are maintained for each general ledger account and the sum of all debits equals the sum of all credits.

Assistance is available from DCA as needed to help CDBG recipients comply with these requirements.

### **Uniform Chart of Accounts**

In 1997, the Georgia General Assembly passed the Local Government Uniform Chart of Accounts and Reporting Act (HB 491). Beginning fiscal years ending in 2001, local governments must adopt and use a state published uniform chart in their accounting records; audited financial statements, including Comprehensive Annual Financial Reports (CAFRs); and reports to state agencies.

All transactions must be classified in conformity with the Fund, Balance Sheet, Revenue, and Expenditure classification descriptions contained in the state publication Uniform Chart of Accounts for Local Governments in Georgia, available from DCA.

### **Accounting Records and Suggested Files**

The first step in the accounting process is to establish the accounting records and files that should be maintained. These may include the following:

- Open Purchase Order File
- Open Contracts File
- Pending Payment File
- Pending Receipts File
- Personnel Payroll File
- Cash Receipts Register
- Cash Disbursements Register
- General Journal
- General Ledger
- Fixed Assets Ledger
- Cash Control Ledger
- Expenditure Summary Report
- Receivable and Payable Subsidiary Ledgers, and
- Permanent Files

In establishing the accounting records, the following steps are suggested:

1. Establish the **Open Purchase Order File**, which contains purchase orders that have been issued but not filled. These unfilled purchase orders should be filed in sequence according to purchase order number.
2. Establish the **Open Contracts File** with a section for each open contract. Contract summary forms, a copy of the contract, contract invoices, and related correspondence should be filed in each section.
3. Establish the **Pending Payments File**, which contains all invoices and payment vouchers that have been approved for payment. The supporting documentation should be filed by due date with periodic reviews of the file to ensure timely payment.
4. Establish the **Pending Receipts File**, which contains documents to identify payments expected to be received. When the amounts are received, supporting documentation should be attached to the invoice or other form, the transaction should be recorded on the Federal Cash Control Register and posted to the Receivables Subsidiary Ledger, and the funds should be deposited on a timely basis.
5. Establish the **Personnel Payroll File**, which contains a section for each city employee who has worked on CDBG activities. For each employee, the file will contain the following:
  - Personnel Service Rate Computation
  - CDBG Personnel Timesheet (a sample format is included in the Appendix).
  - The file should also contain a section for a copy of the Personnel

Payroll Distribution Worksheet.

- Items within each section should be filed by date.
6. Establish the **Cash Receipts Register**. This register should be maintained in a loose-leaf binder to document all cash receipts.
  7. Establish the **Cash Disbursements Register**. This register should be maintained in a loose-leaf binder to document cash disbursements.
  8. **General Journal entries** are prepared to record accounting transactions that do not involve cash receipts or disbursements. Journal entries should be prepared for adjustments and special actions such as CDBG budget, year-end accruals, etc.
  9. Establish a **General Ledger** account page for each general ledger account in the chart of accounts. These pages can be maintained in a loose-leaf binder so that new accounts or continuation pages can easily be added.
  10. Establish a **Fixed Asset Ledger**. This ledger should be maintained in loose-leaf form to control all fixed assets acquired in whole or in part using CDBG funds.
  11. Establish a **Cash Control Register**. Enter the fiscal year at the top. A Separate Cash Control Register should be maintained for each fiscal year.
  12. Establish an **Expenditure Summary Report** page for each budget line item. It is possible to combine more than one project on a page, depending on the volume of transactions. These pages should be maintained in loose-leaf form.
  13. Establish a **Receivable and Payable Subsidiary Ledger** if advances or loans are made or goods and services are purchased on account. The ledger should be maintained in loose-leaf form. A separate record should be established for each person who has received a loan or advance, and for each individual vendor to whom money is owed.
  14. Establish the **Permanent Files**, which should parallel the organization of the aforementioned accounting records, files and reports.
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### SAMPLE FILING FORMAT

**File No.   Content**

- 1     **Grant Application File:**
  - Copy of Application
  - Correspondence about application
  - Low/moderate income data

- Target area surveys
- 2 **Grant Award File:**
    - Award Statement
    - Special Conditions
    - Revisions
    - Correspondence
    - Grant Adjustment Notices
  - 3 **Drawdown Information:**
    - Authorization Agreement for Automatic Deposits
    - Authorized Signature
    - Certification
    - Request for drawdowns
  - 4 **Reports:**
    - Quarterly Progress and Expenditures
    - Annual Program Income Report
    - Final Wage Compliance Report
    - Other required reports
  - 5 **Citizen Participation Documentation:**
    - Dated Public Hearing Notice(s)
    - Minutes of hearing(s)
  - 6 **Environmental Review Record (ERR):**
    - Environmental Assessment Format II
    - Public Notice(s)
    - Public comments and response
    - Finding of Exemption (if applicable)
    - Statutory Checklist
    - Request for Release of Funds/Certifications
    - Release of Funds letter from DCA
  - 7 **Fair Housing/Equal Opportunity Files:**
    - Civil Rights Checklist
    - Beneficiary Data (Both applicants and recipients of direct benefits)
    - Sex (Female Head of Household)
    - Racial and Ethnicity Identity
    - Income
    - Disability
    - Section 3 Reports
    - Section 3 Accomplishments
    - Actions to Affirmatively Further Fair Housing
  - 8 **Labor and Contract Documentation:**
    - Request for proposals
    - Invitation to Bid
    - Bid opening minutes

- Preconstruction Conference Minutes
- Contracts
- Contract Change Orders
- Contract budget spreadsheets
- Contract monitoring activities
- Contractor approval forms
- Wage Rate Determinations
- Payroll reports
- Certification of compliance
- Employee Interviews
- Certification of Lawful Status

9 **Financial Expenditure Documentation:**

- Invoices
- Approved payment forms
- Check copies

10 **Audit Records**

CDBG files should include source documentation concerning program transactions between your community and DCA. The format of the filing system may vary from community to community. However, the basic files listed above should be maintained by all communities to ensure compliance with the conditions of grant award and facilitate day to day administration. In addition, for housing projects, individual contractor and case files should be maintained for each beneficiary.

## **SECTION 2: AUDIT REQUIREMENTS**

1. Recipients must contract for annual independent audits of their financial operations, including compliance with Federal and State law and regulations. The contracts for independent audit must be done in accordance with OMB Circular A-133 if the following circumstances occur:
  - If Recipient expends \$750,000 or more in a year in **total federal funds** (CDBG plus any other federal funds), they must submit an annual audit that should be made in accordance with OMB Circular A-133, the General Accounting Office Government Auditing Standards and the Single Audit Act Amendments of 1996.
  - This audit should also include a Project Cost Schedule and a Source and Application of Funds Schedule.
2. Recipients that expend **less than \$750,000 in a year in total federal** (CDBG plus any other federal funds) awards are exempt from Federal (but not State of Georgia) audit requirements for that year. However, records must be available for review. In these cases a copy of the State Audit as well as the Project Cost Schedule and Source and Application Schedule must be submitted. CDBG funds may be used for pay for these financial schedules.

3. Recipients are required to submit audits according to State laws and regulations.
4. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts for audit services awarded with CDBG funds. Recipients shall take the following affirmative action to further their goal:
  - Assure that audit firms owned and controlled by socially and economically disadvantaged individuals as defined in PL 95-507 are used to the fullest extent practicable.
  - Make information on forthcoming opportunities available, and arrange timeframes for the audit so as to encourage and facilitate participation by small or economically disadvantaged firms.
  - Consider in the contract process whether firms competing for larger audits intend to subcontract with small or economically disadvantaged firms.
  - Encourage contracting with small or economically disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.
  - Encourage contracting with consortiums of small or economically disadvantaged audit firms as described in Paragraph A when a contract is too large for an individual small or economically disadvantaged firm.
  - Use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration in the solicitation and utilization of small or economically disadvantaged audit firms.
  - A copy of all audit reports shall be provided by the Recipient to DCA no later than 30 days after issuance of the reports and no later than one year plus 30 days after the end of the audit period.
5. Audits must include an examination of internal control systems established to ensure compliance with laws and regulations affecting the expenditure of CDBG funds, financial transactions, and accounts and financial statements, and reports of Recipient organizations. These examinations are to determine whether:
  - There is effective control over and proper accounting for revenues, expenditures, assets and liabilities.
  - The financial statements are presented fairly in accordance with generally accepted governmental accounting principles.
  - The quarterly reports to DCA and claims for advances contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements.

- CDBG funds are being expended in accordance with the terms of the grant award and those provisions of Federal and State law or DCA regulations that could have a material effect on the financial statements.
6. In order to accomplish the purposes set forth above, a representative number of charges to the CDBG award shall be tested. The test shall be representative of all cost categories that materially affect the award. The test is to determine whether the charges:
- Are necessary and reasonable for the proper administration of the program.
  - Conform to any limitations or exclusions of the CDBG award itself.
  - Were given consistent accounting treatment and applied uniformly to both CDBG assisted and other activities of the Recipient.
  - Were net of applicable credits.
  - Did not include costs properly chargeable to other programs.
  - Were properly recorded (i.e., correct amount and date) and supported by source documentation.
  - Were approved in advance if subject to prior approval.
  - Were incurred in accordance with competitive purchasing procedures if covered by Section 4 of Chapter 3 of this manual.
  - Were allocated equitably to benefiting activities, including non-CDBG activities.
7. Audits should be made annually. If an acceptable annual audit is completed within a short period of time prior to close-out of a CDBG program, DCA will request payment documentation of the unaudited funds and then formally close the grant.
8. If the auditor becomes aware of irregularities in the Recipient organization, the auditor shall promptly notify DCA and Recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records and reports, and misappropriation of funds or other assets.
9. The annual audited financial statements shall include:
- A statement that the audit was conducted in accordance with OMB Circular A133.
  - Financial statements, including the schedule of expenditures of Federal awards, including footnotes, of the Recipient organization.
  - The auditor's report on the financial statement which should:
    - Identify the statements examined and the period covered.

- State that the audit was done in accordance with the Generally Accepted Government Auditing Standards.
- Express an opinion as to whether the financial Statements of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies.
- Report on internal controls related to the Federal program, which shall describe the scope of testing of internal control and the results of the test.
- Report on compliance which includes an opinion as to whether the audit is in compliance with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program.
- Include a schedule of findings and questioned costs for the Federal program.
- Identify the Major programs.
- State the dollar Threshold used to distinguish between Type A and B programs.
- Determine whether the audit qualifies as a low-risk audit.

10. The auditor's reports on compliance and internal control should:

- a. Include comments on weaknesses or noncompliance with the systems of internal control, separately identifying material weaknesses.
- b. Report the scope of testing of internal control and the results of the tests, and where applicable, a separate schedule of findings and questioned cost.
- c. Include statement that the audit is in compliance with laws, regulations, and the provisions of contracts or grant agreement that could have a direct and material effect on each major program according to the Federal and State law and where applicable, a separate schedule of findings and questioned cost.
- d. Provide a Summary Schedule of prior audit findings that report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The Summary Schedule shall also include audit findings reported in the prior audit's schedule of prior audit findings except audit findings listed as corrected.
- e. When audit findings were fully corrected, the summary schedule need only list the audit findings and state which corrective action was taken or provide a statement of planned actions taken by Recipient.
- f. A Source and Application of Funds schedule and a Project Cost schedule for all CDBG funds. The appropriate grant numbers should also be shown. Please note that if the city/county's total federal expenditures meet or exceed the guidelines of OMB circular A-133 (\$750,000), the Federal Schedule of Financial Assistance can be substituted for the Source and Application Schedule.
- g. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to DCA.

- h. Comments on corrective action taken or planned by the Recipient.
- 11. Work papers and reports must be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by DCA of the need to extend the retention period. The audit work papers must be made available upon request of DCA or its designees and the General Accounting Office or its designees.
- 12. When an audit discloses significant findings, the Recipient will be called upon by DCA to take corrective action. Depending upon the nature of the inadequacies, Drawdown of Funds, Final Close-Out or subsequent award of a CDBG program may be delayed or denied until corrective action has been taken.

### **SECTION 3: PROGRAM INCOME**

Program income is the gross income earned or received by Recipients from DCA awarded CDBG funded activities. It includes such items as receipts from the sale of real property acquired for non-administrative purposes, rental fees, and retained bid guarantees, and payments of principal and interest on loans made using CDBG funds.

1. Program income generated by a DCA funded grant generally **must be returned** to DCA. However, see item 2 below for active CDBG Recipients. Any Program Income retained by the Recipient must be clearly identified in the records as to date of receipt, nature of receipt, amount of receipt, and specific CDBG award which generated the income.
2. For active Grantees, **program income is considered "cash on hand" for drawdown of funds purposes.** (See Chapter 1, Section 6 - "Drawdown of Funds" - in this manual.) However, small receipts of program income may be accumulated up to \$5,000 in combination with other cash on hand.
3. CDBG draws must be deposited in non-interest bearing checking accounts. Any interest inadvertently earned on advances is not program income, must be returned to DCA quarterly, and may not be used by the Recipient under any circumstances.
4. Proceeds from the sale of real or non-expendable personal property purchased in whole or in part with CDBG funds for the purpose of administering CDBG program must be handled in accordance with Chapter 3, Section 6 - "Property Management Standards" - of this manual.
5. Receipts such as refunds of travel advances and overcharges from vendors are not program income but rather constitute decreases in expenditures. They should be used not less than once a month to pay bills on hand and should be reflected as miscellaneous income on the first drawdown form submitted after receipt of the income. If such refunds, in addition to other cash on hand, exceed \$5,000, they should be immediately returned to DCA, in accordance with Chapter 1, Section 6 - "Drawdown of Funds" - of this manual. If there is no active CDBG award at the time of receipt of such refunds, DCA should be immediately advised and instructions for disposition of the funds requested.

- 6 Proceeds from the amortization of CDBG loans that are deposited into a local DCA approved Revolving Loan Fund (RLF) does not have to be remitted to DCA or used to offset future CDBG draws. Localities can allow program income to accumulate in the RLF while drawing down CDBG funds for other, unrelated projects. For example, if a locality uses an RLF to make economic development loans to small firms, which otherwise would not expand and/or hire additional employees, it could still drawdown CDBG funds to pay for housing rehabilitation projects in a local target area. For more information on this topic, contact the CDBG Section. All Recipients with approved RLFs must comply with all RLF reporting requirements.
7. The Program Income Report found in the Appendix should be submitted annually for the period ending September 30. The report is due by October 30. If no program income is received during the year, it is not necessary to submit a Program Income Report.

## **SECTION 4: PROCUREMENT**

### **A: STANDARDS**

The Recipient is the responsible authority under its contracts, without recourse to DCA regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in connection with a CDBG program. Matters concerning violation of law are to be referred to such Local, State or Federal authority as may have proper jurisdiction. However, Recipients are encouraged to contact DCA for assistance in any procurement matter.

1. Recipients may use their own procurement regulations which reflect applicable State and Local law, rules and regulations provided that **all procurements made with CDBG funds meet the following standards:**
  - a. CDBG Recipients must maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
  - b. CDBG Recipients must maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the CDBG Recipient shall participate in selection, or in the award or administration of a contract supported by CDBG funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
    - (i) The employee, officer or agent,
    - (ii) Any member of his immediate family,
    - (iii) His or her partner, or
    - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

Grantee and sub-grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or Local Law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and sub-grantee's officers, employees, or agents, or by contractors or their agents.

2. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized where possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
  - a. Including qualified small and minority businesses on solicitation lists.
  - b. Assuring that small and minority businesses are solicited whenever they are potential sources.
  - c. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
  - d. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.
  - e. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.
  - f. If any sub-contracts are to be let, requiring the prime contractor to take the affirmative steps in a. through e. above.
  - g. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.
  - h. Grantees are encouraged to obtain goods and services from labor surplus areas.
3. Competition: All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to:
  - a. Placing unreasonable requirements on firms in order for them to qualify to do business,
  - b. Requiring unnecessary experience and excessive bonding,
  - c. Noncompetitive pricing practices between firms or between affiliated companies,
  - d. Noncompetitive awards to consultants that are on retainer contracts,
  - e. Organizational conflicts of interest,

- f. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
  - g. Any arbitrary action in the procurement process.
4. Recipients must have written selection procedures that provide, as a minimum, the following procedural requirements:
- a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, set forth minimum essential characteristics and standards to which it must conform to be satisfactory. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other important requirements of procurement. The specific features of the named brand that must be met by offerors must be clearly stated.
  - b. Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.
  - c. Awards shall be made only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
  - d. Proposed procurement actions must be reviewed by Recipient officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis must be made of lease and purchase alternatives to determine which would be the most economical practical procurement. Consideration should be given to consolidated or breaking out to obtain a more economical purchase. To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goals and services.
  - e. Recipients must perform some type of cost or price analysis concerning every procurement action including contract modifications and must only permit allowable costs to be included.

The cost plus the percentage of cost method of contracting shall not be used. In addition, contracts with other public agencies will only allow actual cost to be paid. No profit is allowable when contracting with other public agencies.

- f. Recipients must maintain records sufficient to detail the significant history of procurement. These records must include, but are not necessarily limited to,

information pertinent to rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

- g. Recipients must maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase order.

## **B: METHODS OF PROCUREMENT**

All contracts must be made with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration may be given to such matters as contractor integrity, record of past performance, financial and other technical resources, or accessibility to other necessary resources.

Procurement records or files shall provide, as applicable, at least the following pertinent information: justification for the use of negotiation instead of advertising, contractor selection, and the basis for the cost or price negotiated.

**A system for contract administration must be maintained by the Recipient to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.**

There are four methods of procurement that can be used by Recipients, if authorized by locally adopted standards:

1. **Small purchase procedures** which can be used for procurements under \$100,000 (if allowed by local policy) and which require that price or rate quotations be obtained from an adequate number of qualified sources. Note that this method is not appropriate for procurement of administrative or professional services.

2. **Public Works Construction: Competitive sealed bids**

DCA, under the authority of 24 CFR 570.489(g), has adopted Title 36, Chapter 91 of the Official Code of Georgia, Georgia Public Works Construction Law, for procurement of public works construction projects. A copy of this law can be found in Appendix II. The Georgia Municipal Association has published a Guide to the requirements and options available under this state law. The Guide and the text of the law are available on the GMA website at:

<http://www.gmanet.com/Publications.aspx?CNID=19968>.

In addition to the traditional design-bid-construct method of public works projects, the law allows for other alternative construction delivery methods. These include the design-build and construction management methods. Before using alternative methods available in addition to those discussed in the "Common Rule" (24 CFR Part 85), the Recipient must consult with DCA and seek the advice of legal counsel.

The Georgia law's advertising requirements must be followed by CDBG Recipients and include:

- ✓ The contract opportunity must be posted in the governing authority's office;

- ✓ The contract opportunity must be advertised in either the legal organ of the government, or on an Internet website of the government entity or one identified by the entity; and
- ✓ Contract opportunities must be advertised at least two times:
  - ♦ The first advertisement must be at least 4 weeks prior to the bid opening date; and
  - ♦ The second advertisement must follow at least 2 weeks after the first advertisement.

**Note:** Advertisements placed on an Internet website should run continuously for at least four weeks.
- ✓ The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for bidders to properly respond to the invitation.
- ✓ All bids must be opened publicly at the time and place stated in the invitation for bids.
- ✓ A firm-fixed-price contract award must be made by written notice to the responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs must be considered in determining which bid is lowest.
- ✓ Any or all bids may be rejected when there are sound documented business reasons that to do so would be in the best interest of the program.

Recipients are encouraged to use additional auxiliary methods of publication in order to ensure maximum competition in the procurement process.

3. **Competitive negotiation** is a method of procurement for professional services where proposals are requested from a number of sources and the Request for Proposal (RFP) or Request for Qualifications (RFQ) is publicized. Negotiations must be conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Recipients should perform a systematic analysis of each contract item or task to assure adequate service and to offer reasonable opportunities for cost reductions. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements apply:
- a. Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals must be publicized and reasonable requests by other sources to compete must be honored to the maximum extent practicable. "Solicitation" requests by the Recipient must be specifically addressed to a list of more than one potential proposer identified by the City/County. To "publicize" the RFP, the Recipient must also offer the RFP through publication in a newspaper with adequate circulation or publication by other means such that reasonable exposure to potential proposers can be expected.
  - b. The Request for Proposal must identify all significant evaluation factors, including price or cost where required and their relative importance.
  - c. The Recipient must have mechanisms for technical evaluation of proposals received, for determinations of responsible offerors for the purpose of written or oral discussions, and for selection for contract award.

- d. Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.
- e. Recipients may use competitive negotiation procedures for procurement of Architectural/Engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
- f. If "competitive negotiation" is not successful, then the Recipient must receive "sole source" approval from DCA before contracting.

### **Special Note on Procurement for Grant Administration and other Professional Services**

Note that this process is not required when contracting with RDCs. These provisions apply, typically, to contracts with private consultants, engineers and architects.

Recipients are advised that CDBG payments for professional services are subject to the "competitive negotiation" requirements of 24 CFR, Part 85 (the "Common Rule", discussed above and included in the Appendix).

To comply, the recipient government (not the individual or firm proposing to provide services) should:

- a. Develop a request for proposal (RFP) which includes an explanation of how proposals will be evaluated, including any "evaluation factors" selected by the applicant. A Request for Qualifications may also be acceptable for engineering procurement.
- b. Publicize the RFP. This is most often accomplished by publishing it in the recipient's "legal organ;" The publication must be at least 30 days prior to the deadline for receipt of proposals.
- c. Send a letter with copy of RFP to a number of "known providers". When soliciting firms to administer projects, RFP's should be sent to at least seven (7) known providers. When soliciting engineering/architectural services, RFP's should be sent to at least 10 known providers. As a service to Applicants, Recipients and others, DCA maintains a list of professionals who have expressed an interest in bidding on CDBG projects. This is not an "approved" list. DCA does not approve or disapprove professionals. This is the Applicant or Recipient's responsibility.
- d. Documentation must be available that the solicitation was actually sent to providers, such as postal return receipt or email verification of delivery.
- e. Negotiate with (preferably with at least two) respondents to the RFP.
- f. Prepare documentation (file memo, etc.) which evaluates proposals and establishes reasons (based on criteria in RFP) for contractual recommendations.

- g. Consult city or county attorney with above recommendations and proposed contract; and
  - h. Based upon established reasons and attorney's recommendation, obtain full council/commission approval and execute contract. Letter(s) thanking unsuccessful respondents for making a proposal should then be sent. Based on evaluation criteria contained in the RFP, this letter should state reasons why the respondent was not hired.
4. **Non-Competitive** or "Sole Source Procurement" requires prior DCA approval and may be considered when:
- a. The item or service is available from only one source;
  - b. Urgent public need will not allow for the delay caused by advertising;
  - c. Although a number of bids were solicited, only one response was received.

### **C. CONTRACT REQUIREMENTS**

The Recipient must include, in addition to the provisions needed to define a sound and complete agreement, the following provisions in all contracts:

1. Contracts other than small purchases must contain such contractual provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and they must also provide for appropriate sanctions and penalties.
2. All contracts in excess of \$10,000 must contain provisions for terminations "for convenience" by Recipient, including when and how termination may occur and the basis for settlement. In addition, all 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.
3. All contracts awarded by Recipients and their contractors or sub-grantees having a value of more than \$10,000 must contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in the Department of Labor regulations (41 CFR, Part 60).
4. All contracts and sub-contracts over \$2,000 for construction or repair must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (23 CFR, Part 3). This act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Recipient must report all suspected or reported violations to DCA. (See Chapter 2, Section 3 - "Labor Standards" - of this manual.)

5. All construction contracts awarded by Recipients and their subgrantees in excess of \$2,000 must include a provision for compliance with Davis- Bacon Act (40 U.S.C. 27a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Recipient must place a copy of the current Prevailing Wage Determination issued by the Department of Labor in each solicitation and the award of a contract must be conditioned upon acceptance of the wage determination.

The Recipient must report all suspected or reported violations to DCA. (See Chapter 2, Section 3 - "Labor Standards" - of this Manual.)

6. Where applicable, all contracts awarded by Recipients and sub-grantees in excess of \$100,000 for construction contracts which involve the employment of mechanics or laborers must include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer based on a standard workday of 8 hours and a standard workweek of 40 hours.

Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay of all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor.

These requirements do not apply to the purchases of supplies or material or articles ordinarily available on the open market. (See Chapter 2, Section 3, - "Labor Standards" - of this manual.)

7. All negotiated contracts (except those of \$10,000 or less) must include a provision that DCA, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purposes of making audit, examination, excerpts, and transcriptions for 3 years after final payment of the Recipient and all pending matters are closed.
8. Contracts, sub-contracts and sub-grants of amounts in excess of \$100,000 must contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h) or Section 508 of the Clean Air Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), that prohibit the use of facilities included on the EPA List of Violating Facilities.
9. Contracts must recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

10. Contracts and sub-contracts must include the Section 3 Clause of the Urban Development Act of 1968 and any additional language required in order to adequately enforce Section 3 requirements.

## **SECTION 5: BONDING AND INSURANCE**

The minimum Bonding and Insurance requirements under state law are applicable to public works contracts valued over \$100,000 and require:

1. A performance bond from contractors executed in connection with each contract.
2. A payment bond on the part of the contractor for 100% of the contract price.

In addition, for construction contracts over \$100,000, the minimum federal requirements are as follows:

- a. A bid guarantee from each bidder equal to 5% of the bid price. The bid guarantee may consist of a bid bond, certified check, or other negotiable instrument accompanying the bid.
- b. A performance bond from contractors for 100% of the contract shall be executed in connection with each contract.
- c. A payment bond on the part of the contractor for 100% of the contract price.

All bonds shall be obtained from companies holding certificates of authority as acceptable sureties under state and federal requirements.

In addition, DCA requires that Recipients require adequate contractor's liability insurance from all contractors. A minimum coverage of \$25,000 property and \$50,000 bodily injury coverage must be maintained.

## **SECTION 6: PROPERTY MANAGEMENT STANDARDS**

Recipients shall use their own property management standards and procedures provided that the minimum standards listed below are met. These standards apply to all property acquired with CDBG funds for administrative purposes. Property acquired in carrying out the programmatic activities approved in the award shall be used and disposed of in accordance with the terms and conditions of the CDBG award itself whenever specified in the application.

1. The various kinds of property are defined as follows:
  - a. **Real property.** Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
  - b. **Personal property.** Personal property of any kind except real property. It may be tangible - having physical existence, or intangible - having no physical existence, such as patents, inventions and copyrights.

- c. **Non-expendable personal property.** Non-expendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.
- d. **Expendable personal property.** Expendable personal property refers to all tangible personal property other than non-expendable property.
- e. **Acquisition cost of purchased non-expendable personal property.** This refers to the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purposes for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protection in transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the Recipient's usual accounting practices.

2. The minimum standards are as follows:

- a. When the CDBG award under which the property was acquired is closed out, the Recipient may use the property for any subsequent CDBG activities, or if there is no subsequent CDBG award, for any eligible Community Development activities.
- b. When the Recipient no longer needs the property for any eligible Community Development activities, the following regulations apply:
  - (i) The Recipient shall request disposition instructions from DCA for all non-expendable property with a unit acquisition cost of \$1,000 or more, for all real property regardless of acquisition cost, and for all expendable personal property with an aggregate fair market value of \$1,000 or more.
  - (ii) Non-expendable property with a unit acquisition cost of less than \$1,000 and expendable personal property with an aggregate fair market value of less than \$1,000 shall be retained by the Recipient and used or disposed of at his discretion.

3. The Recipient's property management standards for non-expendable personal property shall provide that:

- a. Property records are maintained accurately and include a description of the property, a manufacturer's serial number or other identification number, the CDBG grant number with which it was acquired, the acquisition date and cost, the location, use and condition of the property and the date the information was reported, the unit acquisition cost and the ultimate disposition date.
  - b. A physical inventory shall be taken and the results reconciled with the property records at least once every two years. Any differences shall be investigated to determine the cause.
4. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage or theft of property. Any loss, damage, or theft shall be investigated and fully documented.

5. Adequate maintenance procedures shall be implemented to keep the property in good condition.
6. Where the Recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.
7. Shared use. During the time non-expendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other CDBG projects or programs sponsored by DCA. Second preference shall be given to other programs. User charges should be considered if appropriate.
8. Adequate dwelling and liability insurance coverage must be secured by the Recipient whenever it acquires or manages property.