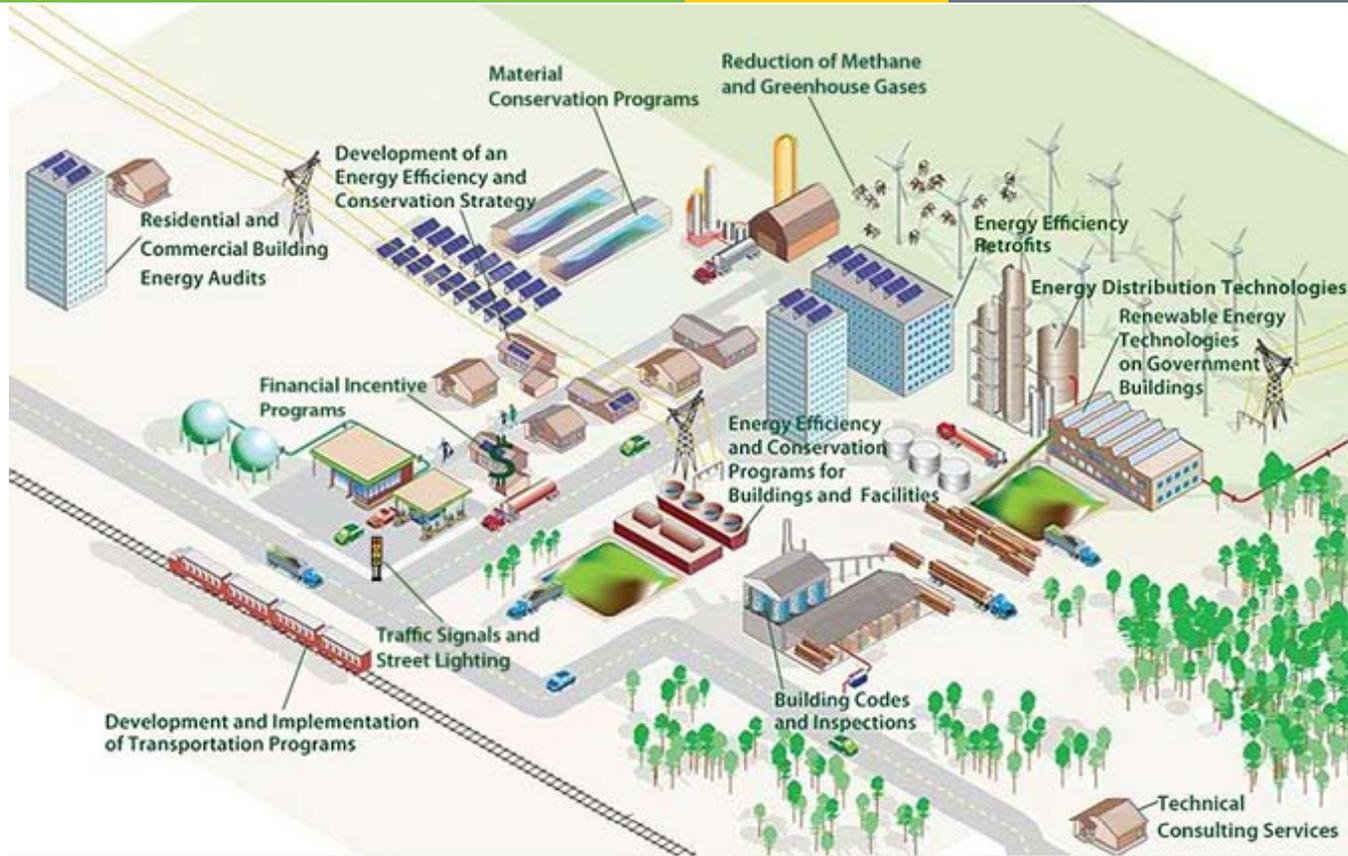


CEC & Energy Efficiency and Conservation Block Grant Programs (EECBG)



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EECBG Procurement

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Disclaimer: The contents of this presentation are for informational purposes only and do not include all guidance. For official guidance, please refer to the 10 Code of Federal Regulations (CFR) 600.

Link: http://www.access.gpo.gov/nara/cfr/waisidx_09/10cfr600_09.html

Procurement Objectives

- Expediency
 - Proceed to implement EECEBG programs and activities, without delay, in order to promote the purpose and goals of the Recovery Act and the EECEBG Program.
- Compliance
 - Follow the applicable procurement requirements and practices set forth in the DOE Financial Assistance Rules with regard to the use of competitive and non-competitive solicitations.

Accomplishing Procurement Objectives

- To achieve expediency AND compliance with pertinent rules and regulations, questions will be answered by the California Energy Commission (CEC) and the US Department of Energy (DOE).
 - Contact: eecbg@energy.state.ca.us
- Consult your legal counsel if additional clarity is needed. Refer to the financial assistance rules in 10 CFR 600.

10 Code of Federal Regulations (CFR) 600

- The 10 CFR 600 are financial assistance rules which establish uniform policies and procedures for the award and administration of DOE grants and cooperative agreements.
- EECBG grantees and sub-grantees are required to follow 10 CFR 600.236 (Procurement), which prescribes regulations that must be followed when entering into procurements for property and services under the EECBG Program.
- 10 CFR 600.200 only applies to government entities. Other sections of the 10 CFR 600 apply to nonprofit organizations, for-profit organizations, institutions of higher education, etc.

Link: http://www.access.gpo.gov/nara/cfr/waisidx_09/10cfr600_09.html

Role of State in Administering Subgrants

- California Energy Commission (CEC) is responsible for the oversight and management of subgrants
- As set forth in Federal Financial Assistance Regulations, states shall do the following:
 - Follow state law and procedures when awarding and administering subgrants to local governments;
 - Ensure that every subgrant includes required Federal clauses;
 - Ensure that subgrantees are aware of Federal requirements imposed upon them;
 - Ensure subgrants comply with record access and record retention requirements (see 10 CFR 600.242)
 - Ensure grant fund advances are subject to the same standards that apply to cash advances by Federal agencies.

Source: 10 CFR 600.237 (Subgrants)

- Subgrantees are directed to use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in Section 10 CFR 600.236.

Note: Please refer to Section 10 CFR 600.236(b)(i) for a complete description of the procurement responsibilities of non-State Grantees and sub-grantees.

Preference for Full and Open Competition

- All procurement transactions must be conducted in a manner providing full and open competition
- Certain situations are restrictive of competition, including the following:
 - Placing unreasonable requirements on firms in order for them to qualify to do business;
 - Requiring unnecessary experience and excessive bonding;
 - Non-competitive pricing practices between firms or between affiliated companies;
 - Non-competitive awards to consultants that are on retainer contracts;
 - Organizational conflicts of interest;
 - 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
 - Any arbitrary action in the procurement process.

Source: 10 CFR 600.236(c).

- EECBG Grantees and sub-grantees are directed to conform their procurement procedures to the following methods:
 - Procurement by small purchase procedures;
 - Procurement by sealed bids (formal advertising);
 - Procurement by competitive proposals; and
 - Procurement by non-competitive proposals.

Source: 10 CFR 600.236(d).

- Procurement by competitive proposal is normally conducted with more than one source submitting an offer, with either a fixed-price or cost-reimbursement type contract being awarded.
- This method of procurement is generally used when conditions are not appropriate for the use of sealed bids.

The following requirements apply for competitive proposals:

- Requests for proposals (RFPs) will be publicized and identify all evaluation factors. Any response to an RFP shall be honored to the maximum extent practical;
- Proposals will be solicited from an adequate number of qualified sources;
- Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;
- Competitive proposal procedures can be used for qualifications-based procurement of architectural/engineering professional services
 - In this situation, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

- Non-Competitive Proposals: Procurement by non-competitive proposal is procurement through solicitation of a proposal from only one source
- Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals.

Non-Competitive Proposals (continued)

In addition, one of the following circumstances must apply when non-competitive proposals are used:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The awarding agency authorizes noncompetitive proposals; or
- After solicitation of a number of sources, competition is determined inadequate.

- Does 10 C.F.R. Section 600 apply to loans?
 - 10 CFR 600 applies to the use of funds and the process for States and subgrants for procurement, not to specific project activities such as loans.
- If 10 C.F.R. Section 600.236 does not apply to loans, are there any rules regarding competitive bidding that apply to ARRA-funded loans?
 - The procurement of the entity processing the Loans is covered under 10 CFR 600.
 - Program regulations and award terms will dictate what the grantee is to follow.

- Our electric utility has offered a contract for “turnkey” streetlight replacements. They will put the installation work out to bid. Does this take care of the competitive procurement requirements?
 - *The "turnkey" contract should be competed to start with (or else justified per 600.236 for sole source award). Awarding a sole source contract, even if competitive bids are eventually obtained for subcontractors conducting the installation work, does not satisfying competitive procurement requirements.*
- We have a streetlight maintenance contract, including replacements that we put out to competitive bid. We are contractually obligated to use the contractor for replacements. Does this take care of competitive procurement requirements?
 - *It appears the work is being sufficiently competed.*

Additional Items to Remember

- Procedures are needed to avoid the purchase of unnecessary or duplicative items.
- Grantees are encouraged to enter into State and local inter-governmental agreements for purchases of common goods and services.
- Procedures should be in place to ensure awards are made only to responsible contractors.
- Grantees must settle all contractual and administrative issues arising out of procurements.
- Grantees should give preference to minority- and woman-owned enterprises, as well as firms in labor surplus areas.

Note: This list is not all-inclusive. Refer to the 10 CFR 600 for Federal Financial Assistance Regulations.

Further questions??

Please contact: eecbg@energy.state.ca.us