

# COMMUNITY DEVELOPMENT BLOCK GRANT



2014 Grant Compliance Workshop

10/29/2014

# General Update

- Over 300 open projects
  - 4 old projects!
  - 4 09-D's
  - 7 10's
  - 10 11's
- 8 Close-outs so far in October
- Plan to close-out about 60 projects in the next few months including some 12-D's and 13's
- Huge award year for 2014 – 70 regular round projects
- 2 ½ clean audits

# Technical Assistance

## TA Meetings

- If the mayor cannot be there, we need a request from him/her to miss the meeting
- Will have as many meetings as a phone conference as we can
  - No new mayor
  - Project is typical for the community
  - No other unusual circumstances
- Should be complete by December
- Want to get everyone on the same page and ID potential issues

# Timeline

- TA visits: Oct – Nov
- Contract: Returned to ECD within 2 weeks of receipt
- ERR Due Date: December 3
- P/S Due Date: 90 days after FNORCC
- Accept bids: 45 days after P/S approval
- Bid tabs: 14 days after bids accepted
- Final Public Hearing: 30 days after construction ends
- Close-out packet: 14 days after FPH

# Contracts

- Almost all contracts should have been sent to the communities – should be completed this week
- Most of those returned have been fully approved
- A few will have to go through the regular approval process
- If you did not check the budget, contact information and scope of services, go back and check it now!

## **SHPO**

- Asking for more information on many of the projects right now
- Let us know if they request more
- Let us know if it will change the submission date

## Training

- There are a few changes to the presentation
  - Toxics
  - Noise
- Use what is on the website – publication info in Word
- All Equipment ERRs should be in
- Other ERRs are due by Dec 3
- No HEROS!

## Aggregation

- If you will be doing multiple sewer system projects, for example, over the next few years, plan to do an ERR that will cover a few projects
- Make the scope more general
- The time period (5 years) will have to cover the time of construction for subsequent projects

# Labor Compliance

## Davis-Bacon Reminders

- **CHECK THE FIRST FEW PAYROLLS CLOSELY AND IN A TIMELY MANNER!!!!**
- Get issues fixed immediately
- If someone other than the owner, officer or payroll administrator signs the certified weekly payroll, authorization for that person to sign must come with the first payroll

# ••• Labor Compliance

## Wage Rates

- Download wage rates from WDOL
- Check wage rates 10 days before the bid opening and DOCUMENT the check
- Check to see which wage rates are scheduled to be updated
- Spend time in the Pre-Construction meeting reviewing wage classifications to determine if another one is needed – DOL Memo 213

# ● ● ● Labor Compliance

## Wage Rates

- Use 2 wage decisions only if both decisions represent work that is more than incidental to the project
- Make sure you have DOL All Agency Memos 130 and 131
- Can't use another decision because it has the wage classifications that you need or because part of the work is indoors and part outdoors

# Labor Compliance

## Fringe

- Cannot count anything that is required by federal, state or local law (i.e. workers' comp, unemployment comp, social security, etc.)
- Examples of bona fide fringe: health insurance, life insurance, pension, vacation, holidays, sick leave, etc.
  - Contributions must be made irrevocably and not less than quarterly
  - Employee contributions do not count
- Transportation, lodging, per diem, uniforms, tools, etc. do not count

# Labor Compliance

## Deductions

- Allowable deductions: withholding for income taxes, Social Security tax, wage garnishments, legally-permissible deductions voluntarily authorized by the worker (such as insurance premiums, retirement contributions, saving contributions, etc.)
- Use the Authorization of Other Deductions form to show what deductions (other than those required by law or required by a court) are made and that they are voluntary – See HUD Labor Relations Guide

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## Overtime

- Overtime is based on 1 ½ times the hourly rate (no fringe)
- Any work on the D-B covered project over 40 hours in one week
- FLSA requires overtime for all work, but we do not have to follow up on that

# Labor Compliance

## Contractor Responsibilities

- Responsible for applying DBA labor standards to all subcontractors and ensuring compliance
- Responsible for submission of certified payrolls – including those of the subs within 1 week
- Responsible for ensuring that none of the (subcontracted) work is with a person or company who is debarred
- Keep payroll information and backup for at least 3 years

# Labor Compliance

## Business Owners

- Bona fide business owners are exempt from D-B
- If they are doing labor, they have to report hours weekly, but do not have to list a wage and can list “Owner” as classification
- Has to own “at least a bona fide 20% equity interest in the enterprise” and be “actively engaged in its management” (29 CFR 541.101 and 102)
- We use the Bona Fide Business Owner Form to document ownership

<http://tn.gov/e cd /smallbusinessguide/>

# Labor Compliance

## Sole Proprietor

- Similar to a business owner – report hours on weekly payroll with “owner” as the classification and do not have to report wages
- Must provide a Federal Tax ID number and a copy of business license (or copy of the company liability insurance coverage) to show ownership – along with Bona Fide Business Owner Form

# ••• Labor Compliance

## Independent Contractor

- Independent contractors (1099 workers) are subject to D-B

## Working Foreman

- If more than 20% of their time is spent doing labor, they have to be paid D-B wages for that time

## Salaried Employee

- Still required to ensure that minimum wages and fringe for each covered hour meet D-B and must pay more if needed (includes OT)

# Labor Compliance

## Employee Interviews

- Number of interviews are based on the intensity and duration of a project
  - Small projects will have more frequent interviews
- General guideline is once per month – cover all classifications
- If a sub only works a few days, interviews are still required
  - If they cannot be done, the community must document the reasons why

# ••• Labor Compliance

## Restitution

- Find it and fix it early!
- Get copies of cancelled checks – if it is a former employee or that contractor is done with the work, send checks return receipt
- Keep a list of who is paid restitution and how much – we have to report that to HUD

# Labor Compliance

## DBRA

- Copeland “Anti-Kickback” Act
  - It is unlawful to induce anyone working on a federally assisted project to give up any part of the compensation to which he/she is entitled
  - Part of the compliance statement signed each week
- FLSA
  - All workers employed on federal contracts must be paid at least minimum wage and be paid overtime if they work more than 40 hours/week

# Labor Compliance

## DBRA

- CWHSSA
  - Applies to federally financed and assisted contracts in excess of \$100,000 and requires overtime to be paid for workers who work more than 40 hours/week
  - Failure to comply can result in assessment of liquidated damages of \$10/day per violation

# ••• Labor Compliance

## Additional Points

- Installation is allowed up to 13% of project costs
  - So, when you are installing items like sirens, D-B could apply
- Can split classifications (even for plumbers and electricians) – have to keep really good documentation

# Plans and Specs

- Administrators need to review!!!
  - Look for brand names, inconsistencies in days for construction, make sure all ECD documents are there, is the right mayor listed, brand names, appropriate deducts and additives, etc.
  - We will send them back if it is obvious that the admin has not reviewed
- Send P/S to Project Rep
- If you have an urgent addenda, cc Brooxie
- Give us a few days to review and respond

# Plans and Specs

- Make sure you get the word out to minority contractors:

<http://www.tdot.state.tn.us/dbedirectinternet/>

<http://www.tn.gov/businessopp/regdivcomp.html>

- Let GoDBE know about the bidding opportunity –  
Send them a separate document that is just the  
Advertisement for Bid form

# Bid Tabulations

- Don't forget that we have to know when addenda were issued to potential bidders and proof of the 10-day check
- Review for completeness and accuracy before sending to TNECD
- If you only got one bid, we will need to know what you did (outside of advertising in a daily paper) to try and get bidders and that the engineer or community does not believe that rebidding will benefit the community
- If alternates are taken, we need info on how they affect the scope

# Change Orders

- In general, they are looking better!
- Anything over 25% of the contract amount is considered a scope change and has to be approved by programmatic and fiscal staff
- This is in place to make sure there is competition and fairness and so that we can be consistent, predictable and efficient
- Attempting to develop fair policies for approving more than 25%

# Fair Housing

## AI

- The AI is part of the CDBG file – at least the Executive Summary
- You and the community are responsible for knowing the contents
- All FH activities have to be connected to one of the impediments identified in the AI
- Additional information will be forthcoming in the manual chapter and other communication from our office
- Keep track of money spent on FH activities

# ••• Fair Housing

## Impediment example and suggested activity

- Discriminatory terms, conditions, privileges, or services and facilities in rental markets
  - Educate landlords and property management companies about FH law
  - Educate consumers in fair housing rights
  - Audit and test for compliance

# ••• Fair Housing

## Impediment example and suggested activity

- Lack of FH ordinances or policies
  - Assist communities in passing a FH ordinance or resolution
  - Educate local government staff about FH regulations

# ••• Fair Housing

## Recommended Activities

- ECD will have a list of recommended activities out in the next few weeks
- Remember that the activity has to affirmatively further fair housing – it has to be active – publishing something in the newspaper is no longer sufficient, even if you can connect it to an impediment

# Acquisition

- All acquisition must be completed before plans and specs can be approved
- Appraisals are not required if
  - Owner is donating and does not want an appraisal or
  - The community determines an appraisal is unnecessary because the valuation is uncomplicated and the anticipated value of the proposed acquisition is \$10,000 or less
  - 49 CFR 24.102

# Acquisition

- When an appraisal is determined to be unnecessary, request an appraisal waiver valuation
- The person performing the waiver valuation must have sufficient understanding of the local market and be qualified to make the waiver valuation
- Send to ECD for approval
- Continue acquisition like normal
- If payment is above market rate, get ECD approval
- Hopefully this will save a lot of money and time!

# Additional Reporting

## Contractor-Subcontractor Report

- Report all contractors and subcontractors including administrative and engineering companies and equipment suppliers so we have an accurate record
- Send an updated report as needed

## PCC and NOCA

- Send Pre-Construction letters and Notices of Contract Award to Lindsay

# Equipment

- Plan to close-out the projects in one year
- Specs should be in quickly – let us know if there will be a delay
- Do not use a specific manufacturer's specs as the basis for yours – this project is to get safety equipment into a community, not make the fire chief happy by getting fancy equipment
- Keep up with VIN and serial numbers, figure out how to track smaller equipment, take lots of pictures, know where the equipment is going and make sure the community knows it too

# Housing

- We are following much more closely to see how your completed project compares to your application – it is not acceptable to not meet the application/contract
- We only have to approve change orders over a cumulative 5%
- Take lots of pictures
- What can we do to speed these projects up?
- Really be alert to potential conflicts of interest

## Section 3

- Continue to discuss Section 3 requirements during the pre-construction conference and bidding process
- Ensure that everyone involved knows that if someone is hired to work on this project, they have to look for Section 3 qualified workers
- Since we rarely have new hires, we have to be diligent about documenting our education efforts

# Section 504

- Section 504 provides that no qualified individual with a disability should, only by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- We are required to ensure that people with disabilities have access our programs – that programs are accessible to and usable by persons with disabilities

# Conflict of Interest

- Remember that perceived conflict of interest is conflict of interest
- Any direct beneficiaries with a perceived/possible conflict of interest need to get that addressed BEFORE they are served
- Watch out for things that others will perceive as a conflict – same last name, etc.
- Let ECD know about it as soon as possible

# Monitoring

- After a visit you have a week to get any missing documentation in to us before it becomes a finding – we will try to go over all of the documentation that we think is missing before we leave, but we can't guarantee that we'll hit everything
- You have 30 days to clear findings – if they aren't cleared, we will follow up with another letter and stop payments if we need to
- Us sticking to a timeline is important to our auditors

# Close-out

- Have packets for each type of project that should eliminate a lot of N/A pages
- Additional questions for equipment – location where it will be kept, VIN/Serial number, description, picture, proof of ownership
  - Please also keep information on insurance for the equipment
- Will have additional questions for water and sewer projects
- Keep files for 5 years!

# Manuals

- Have updated and posted to the website new manual chapters for ERR and Close-out
- Close to completing an Equipment Chapter and updating the Intro
- Will then work on Labor and Fair Housing
- Will update all of the chapters in the coming months
- Check the website regularly

# General Concerns

- Let us know as soon as you can if something will be late and when you will have it in
- There is almost nothing that can't be fixed if we know about it in time
- Review all documents before they come to us
- Let us know about successes and issues that can be fixed

# General Concerns

- Just because you have gotten away with it in the past, doesn't mean it is ok or that we will keep letting it slide
- There are more issues now because we are checking things much more closely
- We are constantly trying to get our processes and procedures more into compliance as well as more efficient
- We always take suggestions for improvement – particularly if they are presented kindly!

# Measurement and Verification

- Will set up an Advisory Board of Engineers, Administrators and Communities
  - Call Kent if you are interested – 615-770-1164
- Will make site visits to at least 10 communities over the next few months to meet with engineer, administrator and community about the success of past projects
  - Let us know if you are interested in being a part
- Will be changing the close-out requirements for system projects to allow us to better track success

# Related Issues

## 2013 Projects

- Status updates are due at the end of the month – will address need for a CAP for those not yet under construction
- Plan to close-out 15 of the 2013 projects for the next application round
- Equipment projects should be closing out now – just 1 so far
- Let us know early on about needed monitoring

# Related Issues

## Current Disaster Projects

- Fully approved amendments for the 2012-D supplemental funds have started to come through
- Do not start on work with new funds until those funds have been approved
- We will need monthly updates on the progress of these projects
- NO change in end date

# Related Issues

## 2011-D Projects

- Have awarded most of the first round of funds and projects in Shelby County are underway
- Will ask for full applications this fall for other awards
- Will allow 18 months for completion of the project, so be prepared to start work immediately
- Process will be the same, just abbreviated

## Related Issues

### National Disaster Resilience Competition (NDRC)

- First submission to HUD is due on November 3<sup>rd</sup> to identify the most-impacted and most-distressed communities that will be the focus
- Good partnerships in place and will add the communities in mid-November
- Phase I application is due March 15
- Will be asked to submit an application for Phase II



# Related Issues

## Commercial Facade

- 10 projects in 2014
- Training on November 12, 1:00
- Plan to close-out all in about a year

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