

# Federal Procurement Procedures in Hiring Independent Consultants

October 30, 1995

Honorable Sue W. Kelly  
Member, United States  
House of Representatives  
21 Old Main Street, Room 205  
Fishkill, NY 12524

Dear Mrs. Kelly:

On behalf of Secretary Cisneros, thank you for your letter of July 31, 1995, regarding your constituent, Mr. Constantine Kazolias, who questions the City of Poughkeepsie, New York's, compliance with Federal procurement procedures in the hiring of an independent consultant to replace the Community Development Director for Social Programs. Mr. Kazolias asks the Department of Housing and Urban Development (HUD) to investigate this matter and to take corrective actions, as appropriate.

The Community Development Block Grant (CDBG) regulations at 24 CFR 570.200(d)(2) state that "consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36...." In procurement actions, the regulations at 24 CFR 85.36 describe four methods of procurement that a grantee may follow. They are (1) procurement by small purchase procedures, (2) sealed bids, (3) competitive proposals, or (4) noncompetitive proposals. The nature of each procurement action will usually dictate the appropriate method to be used. The procurement standards at 24 CFR 85.36 also permit grantees to use their own procurement procedures that comply with State and local laws and regulations, provided those procedures, at a minimum, meet the standards of 24 CFR 85.36.

The City of Poughkeepsie solicited proposals for planning assistance for the City's Community Development Block Grant (CDBG) program by sending a Request For Proposals (RFP) to eight consultant firms. The RFP was not publicized as is required for competitive proposals. The City indicates that due to the Director of Community Development's abrupt resignation and an investigation of the Director of Policy Development, the City was undergoing much criticism because nothing was getting done. The City indicates that the lack of people in these two key positions to carry out program functions constituted an emergency for which it justified not publicizing the RFP. Under certain unusual circumstances it may be necessary for a City to use the noncompetitive method of procurement. Such a circumstance might be when the public exigency is such that the additional time required to follow competitive procurement procedures would not be prudent. Regardless of how the procurement was accomplished, 24 CFR 85.36(b)(9) requires the City to maintain records that sufficiently detail the significant history of each procurement. Among other things, this would include a justification of the method of procurement followed and the contractor selected.

Based on the above information, Mr. Kazolias' complaint has been forwarded to the HUD New York State Office for further review to determine whether the City's procurement procedures, at a minimum,

meet the standards at 24 CFR 85.36, and whether its procedures were followed in making the award.

It is hoped this information is helpful in responding to your constituent. Thank you for your interest in the CDBG program.

Sincerely,

(signed)

John C. Biechman  
Acting Assistant Secretary