

## CDBG-DR and CDBG-NDR Contract Performance Guidelines DRAFT

The following set of guidelines are to be followed when the city is engaging in development agreements, major procurement contracts, and related commitments of CDBG-DR and CDBG-NDR funds under city control to a private entity (for profit and nonprofit).

There key stages are:

- Procurement
- Performance
- Close Out

In all three key stages it is important to document all activities, communications, decisions, monitoring and closeout in writing with source(s) (i.e. author and people involved) and there should be an “A to Z” file maintained by the city designated compliance function originating department that contains everything necessary to offer a complete narrative involving the contract/agreement.

The underlying principles throughout the process should be:

- Multiple touches
  - From the outset, core city departments should be directly involved:
    - Originating department clearly identified
    - City attorney
    - Finance Department
    - City Manager
  - Other departments/city functions which either have expertise connected to the contract or will be directly/indirectly should be consulted and involved
- Thorough vetting
  - Core questions should be answered completely:
    - Does the developer/contractor/vendor have a demonstrated track record providing what is being sought in the contract/agreement (ideally at least 3 years proven past success)?
    - Verified proof that developer/contractor/vendor has full control over what will be provided (i.e. developer clear ownership of entire site, building, etc.)
    - At least two complete years of financials of all parties involved
    - Two to three reference checks
- Unambiguous outcomes
  - Quantitative deliverables
  - Clearly articulated penalties as appropriate to the procurement deliverables based on deliverables and timelines
  - Clear timelines to serve as basis for scheduled payments (timeline not met then no payment until timeline requirement is met, and/or penalty imposed as defined)
- Measurable performance benchmarks
  - Benchmarks if at all possible should be embedded clearly in the contract/agreement to be used as tracking milestones to measure compliance on an ongoing basis and catch any delays or variations as early in the process as possible
  - Responsibility for contract/agreement management/monitoring clearly defined

- Checklist should be created for use by both city compliance function and contractor which identifies all requirements

#### PROCUREMENT:

- Methodology:
  - Assess best option to produce most beneficial outcome for the city (i.e. RFP, sealed bid, RFQ, negotiated sole source)
  - Vet method chosen as being statutorily acceptable (refer to applicable local, state, and/or federal regulations)
  - Create a check list to use as a guide for all actions needed leading to execution, all needed attachments, and all due diligence steps including sign offs by all involved city departments
  - Formulate clear scope, need, and purpose
  - Establish reasoned, reasonable estimate of cost and connect to funding source(s), funding source requirement (i.e. Allocation #1, #2 or NDR rules)
- Transparency:
  - CM approval for method chosen
  - City Council approval for method chosen including sole source negotiation
  - Establish and identify needed funding source(s)
- Competitive option used
  - Allow sufficient response time to promote transparency as well as allow complete responses depending on detail of RFP, competitive bid,
  - Decision on advertising should be based on cost effective outreach to assure maximum potential competition
  - Communication with interested bidders should be as transparent as possible (ideally written is always better than verbal)
  - Articulate process to be used for determination of awardee
- Selection/Negotiation
  - Before commencing drafting of contract from competition or negotiating if sole source, the vetting process should be completed
  - Any inconsistencies or anomalies discovered during vetting should be satisfactorily addressed as part of the written record but, if not possible, then consultation among the core departments should happen to decide go or no-go
  - There should be consistency in contract/agreement with the RFP/Bid/RFQ documents or, if negotiation, scope upon which project was green-lighted, especially what is to be delivered and time frame
  - All terms, obligations, conditions and requirements should be specific and clear (no opportunity to “interpret”)
  - Starting date of contract/agreement should be inserted in the contract language
  - Final contract should be vetted by core departments
  - City Council approval
  - All signatures should be dated

## PERFORMANCE:

- Commencement:
  - Entrance conference should include all parties to the contract, review expected process and outcome, identify specific individuals responsible both city side and contractor/agreement entity, and opportunity to address any lingering or unexpected questions or issues...
- Oversight:
  - Originating department should establish written internal schedule for status reviews and updates on progress of contract/agreement deliverable benchmarks/outcomes
    - Any evidence of delays, deviations from requirements or other differences than contract provisions should always be immediately communicated in writing by the originating department to the contractor/developer/vendor with a timeline clearly set for corrective action
    - Require written responses from contractor/developer/vendor and if timely, addresses issues then put in file
    - If timely responses and raises legitimate need for changes then follow procedures under original negotiation
    - Any changes, amendments, etc. required to be in writing and approved by City Council approval
    - If response is not timely or satisfactory, then city attorney and finance department should become involved to conclusion in addressing issues
    - If resolution of issues becomes evident to not be not possible then timely decision should be made to exercise clauses of contract for non-performance if at all possible before extricating city becomes not cost effective
    - City Council should be consulted immediately upon a decision made that resolution of issues is not possible when resolution is decided is not possible
  - Completion:
    - If applicable, a punch list should be established by the originating department as the contract/agreement draws to a close to serve as a basis for assuring that all obligations and requirements have been met
    - If a punch list is not applicable, then check list should be employed to serve as source for assuring all requirements are met

## CLOSE OUT:

- Close out meeting should be held with the originating department and the vendor/contractor/developer to review punch list and check list to assure there are no lingering questions or issues
  - Ideally, it would be best to have the vendor/contractor/developer sign off on the check list/punch list as evidence of all requirements being met and verified by sign off by the originating department

- Finance department should be informed that close out of contract/agreement has happened
- Originating department should undertake a complete review of the file folder, assure all necessary documentation in sequence order is within the folder, and maintain the records until authorized to dispose