

## **Procurement Practices for REMS Grants**

As a general matter, 34 C.F.R. 80.36 governs competition in procurement transactions by grantees in the REMS program, including a requirement that all procurement transactions must be conducted in a manner “providing full and open competition” consistent with the standards in that regulation. 34 C.F.R. 80.36(c). Although grantees use “their own procurement procedures which reflect State and local laws and regulations” to the extent those procedures are consistent with the Federal requirements, all grantees under the REMS program also must follow the minimum requirements in 34 C.F.R. 80.36. 34 C.F.R. 80.36(b)(1).

The requirements in 34 C.F.R. 80.36 are designed to protect the competitive procurement process from undue influence, and have been in effect for many years. According to 34 C.F.R. 80.36(c), all transactions must be conducted in a manner “providing full and open competition” consistent with the standards in the regulation. Several situations are listed in 34 C.F.R. 80.36(c)(1) that would be considered to be restrictive of competition, although it is important to understand that the list is not exhaustive. Among the examples are:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Organizational conflicts of interest; and
- (4) Specifying only a “brand name” product instead of allowing “an equal” product to be offered.

If a vendor has already assisted the LEA in preparing an application for a REMS grant, and subsequently is interested in providing contract services after the LEA receives the grant award,

a close examination of all activities is warranted to ensure that the vendor did not act as an agent of the grantee, that the vendor does not have an organizational conflict of interest in the procurement, and that the requirements for full and open competition have not been violated.

Please note that the requirements regarding full and open competition could be violated even if a vendor's participation in the application process was limited and the vendor was not acting as an agent of the grantee. For example, a vendor that provides specifications that are then included in a grant application could have a competitive advantage over other vendors. Grantees should carefully examine all of their interactions with vendors to ensure that these interactions do not violate the requirements concerning full and open competition.

It is the responsibility of each grantee to comply with the procurement requirements in 34 C.F.R. 80.36, which takes precedence over State and local procedures in those cases where the minimum requirements in section 80.36 provide greater protection of the procurement process. This Department generally does not have sufficient information to confirm that any particular vendor is eligible or ineligible to compete for contracts with REMS grantees and the status of a vendor may vary depending on the circumstances surrounding each procurement.

Regulations at 34 C.F.R. 80.36(b)(12) require each REMS grantee to have protest procedures to handle and resolve any disputes concerning the procurement process. Under section 80.36(b)(12), the Department does not review disputes between grantees and vendors except in a case where the vendor has already exhausted its administrative remedies under the grantee's protest procedures and the dispute involves either an alleged violation of a Federal statute or regulation, or failure of a grantee to review the dispute under its protest procedures.