



Streamlining Procurement and Contractor Management in CDBG-DR Home Repair Programs

**Thursday, May 9, 2024
11:00 a.m.-12:00 p.m. CDT**



**2024 CDBG-DR Problem Solving Clinic
May 7-9, 2024 | St. Louis, MO**

Presenters



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He/Him

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Learning Objectives



- Attendees will learn options for following procurement related to general construction services.
- Attendees will learn how to establish a group of general contractors "pool" using a contractor prequalification approach to reduce the administrative burden of repetitive contractor qualification underwriting at each bid for a housing project.
- Attendees will learn the benefits of applying unit pricing to construction costs to expedite the final bid process and reduce administrative burden.
- Attendees will be able to successfully execute the steps in awarding bids to a contractor that meets federal procurement requirements.



Agenda

- General construction contractor prequalification basics
- Establishing a contractor pool
- Introducing construction unit pricing
- Awarding bids from a contractor pool
- Checking the debarment status
- Reducing administrative burden takeaways

A photograph of the St. Louis Gateway Arch and the city skyline, framed within a white hexagonal border with a drop shadow, set against a green and blue geometric background.

General Construction Contractor Prequalification Basics



What is Contractor Prequalification?



- Programmatic approach that streamlines and standardizes the procurement process and builds contractor capacity to perform on CDBG-DR projects.
- Contractors are solicited, their qualifications are verified, and they are oriented to program requirements in a single upfront activity to expedite subsequent bidding and reduce repetition.
- Common for home repair programs but can work for any program where the same types of construction activities are undertaken repetitively by grantees.
- Goal is to establish a “pool” of qualified contractors with various skills and experience who can establish a cost reasonable unit-based pricing method for expediting procurement on yet-to-be-determined project sites.

How Does Prequalification Benefit Grantees?



- Reduced Administrative Burden – Programmatic approach saves staff time and effort.
- Compliance – Satisfies some of the federal and state procurement regulations prior to individual project bidding. It can also help meet Minority/Women Business Enterprise (M/WBE) and Section 3 targets, when applicable.
- Consistency – Standardized process helps ensure all potential bidders receive the same information at the same time, which promotes fair and open competition.
- Capacity – Provides ongoing guidance on program requirements to improve performance outcomes.
- Participation – Aggregating and expediting the bid process and payment systems with general contractors helps attract more and retain bidders and provides grantees a better strategy to make sure they receive a sufficient number of bids to keep projects moving.
- Flexibility/ Contingency – If some contractors don't work out, a grantee can move on to the next contractors in the pool without significant delay of re-bidding. For state grantees, it helps ensure there are contractors prepared to work on projects in each region of the state without the need to conduct multiple bid solicitations for different regions.

How Does Prequalification Benefit Contractors?



- Cost and Time Effectiveness – Reduces the number of meetings bidders must attend and bid documents they must reproduce, which saves administrative time and effort.
- Planning – Predictable process and timeline help bidders anticipate work loads and cash flow, and structured ongoing program gives them the opportunity to gain repeat business.
- Support – Capacity building from grantee staff and construction management vendors helps bidders understand and meet performance expectations.
- Relationships – Creates opportunities for small subcontractors to meet with larger ones that offer administrative and reporting support in exchange for a larger labor pool, broader geographic coverage or specialized skills.
- Opportunities – Contractors can access resources to help them get certified as M/WBE, Section 3, and other designations.

Construction Manager Vs. Prime General Contractor

- How is a Construction Manager (CM) the same as a Prime General Contractor (Prime GC)? How are they different?
 - Both roles coordinate and monitor construction activities involving multiple contractors.
 - Both must be competitively procured by the grantee.
 - Prime GCs perform construction in addition to coordinating other general or subcontractor construction, whereas CMs only coordinate and monitor the construction activities of other contractors and do not perform construction themselves.
- Why does this matter?
 - If using a CM, grantees must still competitively procure GCs according to federal, state and/or local rules.
 - A Prime GC may directly select subcontractors without the need for competitive procurement.
- How to determine whether a firm is acting as a CM or a Prime GC?
 - The general contractor will be the entity that signs the agreements for construction and provides the 1-year minimum warranty. The GC may either subcontract specialty trades and subcontractors or have licensed trades on staff.
 - The CM is the entity that coordinates GC procurement and project awards. CM may also be procured or staff of the grantee.



What's the Difference Between Competitive Sealed Bids and Competitive Proposals?*



Milestone	Competitive Sealed Bids	Competitive Proposals
Contractor Pre-qualification Advertisement	Lists threshold qualifications, does not limit number of firms who can prequalify (as long as they meet the minimum threshold qualifications)	Lists qualifications and scoring rubric, may impose a limit on the number of firms that will be prequalified
Unit Pricing	No difference	No difference
Project-Specific Solicitation	Request bids from prequalified contractors for profit, overhead and general conditions (must publicly advertise bid opening)	Request proposals from prequalified contractors that list price and other evaluation factors (such as financial capacity and estimated time to complete work), along with the relative weight of each factor
Bid Opening	Public bid opening required	No bid opening required
Project-Specific Awards	Award lowest responsible and responsive bid (price is determining factor)	Award proposal that is most advantageous to grantee with price <u>and other factors</u> considered
Contract	Must use firm fixed-price contract	May use either firm fixed-price or cost-reimbursement contract with not-to-exceed amount

*2 CFR 200.320

State Grantees Identify which Procurement Rules to Use

- State grantees identify which procurement rules they will follow as provided in the Federal Register notice as follows:
 - 2 CFR 200.318 through 200.327 for itself and all subrecipients.
 - 2 CFR 200.317, meaning that it will follow its own state procurement processes and evaluate the cost or price of the product or service, but impose 2 CFR 200.318 through 200.327 on its subrecipients.
 - State follows its own procurement policies and procedures and establishes requirements for procurement processes for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g).

(following own procurement policies must identify how they generally meet intent or comply with 2 CFR 200.318 through 200.327.)



...And Which Method Is Better For Me?

- If using competitive sealed bids, the following conditions from 2 CFR 200.320(b)(1)(i) must apply:
 - A complete, adequate, and realistic specification or purchase description is available.
 - Two or more responsible bidders are willing and able to compete effectively for the business.
 - The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- Completion time and contractor capacity are as critical as price for CDBG-DR activities—therefore, the competitive proposals are often the most efficient when paired with contractor pre-qualification (note that state or local procurement rules may require the use of sealed bids).

How Does Prequalification & Unit Pricing Comply with 2 CFR 200?



Requirement	How to Satisfy it
Competition <i>(2 CFR 200.319)</i>	<ul style="list-style-type: none"> • Hold regular prequalification periods with broad public outreach. • Publicly communicate threshold qualifications and evaluation rubric, if applicable. • Require competitive price proposals for profit, overhead, and general conditions.
M/WBE & Small Business Participation <i>(2 CFR 200.321)</i>	<ul style="list-style-type: none"> • Conduct targeted outreach during prequalification period, e.g. advertising in minority publications and asking diversity, equity, and inclusion (DEI) partner organizations to help spread the word. • Directly invite known M/WBE firms to prequalify. • Divide project scopes into smaller batches. • Require contractors to take the above steps when subcontracting.
Cost Reasonableness <i>(2 CFR 200.324 and 200.404)</i>	<ul style="list-style-type: none"> • Develop preliminary unit pricing to satisfy independent cost estimate. • Refine and finalize unit pricing with help from prequalified contractors. • Perform cost analysis of profit. • Perform price analysis of any scope items not included in unit price list.
Public Notification <i>2 CFR 200.320(b)</i>	<ul style="list-style-type: none"> • Publicly advertise contractor prequalification period.

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Establishing A Contractor Pool

Steps to Establishing A Contractor Pool



1. Conduct public outreach to contractors who may be interested.
 - a. Must publicly advertise if doing projects above the Simplified Acquisition Threshold (or state/local threshold if lower).
 - b. Outreach efforts should include M/WBE, Section 3 and other designations.
2. Hold a prequalification meeting.
3. Collect documents and verify contractor eligibility.
 - a. Develop procedures for underwriting contractor qualifications and notifying them of acceptance or rejection.
 - b. To ensure open competition, the grantee must accept and process all contractor submissions during the prequalification period.
4. Develop a system to notify prequalified contractors of specific project opportunities.
5. Provide ongoing contractor capacity building to support good performance and production.
6. Repeat public outreach on a regular basis to ensure the pool is current and competition is sufficient.

Does Prequalification Mean I Can Just Assign Contractors to Projects?



- No. Pre-qualification and unit pricing satisfy many procurement requirements upfront, but not all.
- It is still necessary for contractors to compete on profit, overhead, and general conditions for specific projects—these items are typically not unit-priced.
- This process is sometimes known as a “mini-bid” because it is faster and simpler than conducting an entirely new solicitation for each project.
- Only the pre-qualified contractors in the pool participate in mini-bids—the public advertisement requirement was satisfied with the initial outreach to create the pre-qualified pool.



Contractor Qualifications*

Insurance and
Bonding

Business
Registration with
State

Non-Debarment
(federal and state)

Financial Capacity

Experience

Professional
licenses (as
required)

M/W/DBE and
Section 3
certification (as
applicable)

Service
Area/Capacity

OSHA and Building
Safety

Past Performance
& References

Conflict of Interest
Statement

No pending
litigation or
insurance claims

*Text in orange indicates what is required



Performance Standards

- How will a contractor's success be measured in the grantee's program?
 - Homeowner satisfaction surveys.
 - Timely completion of work.
 - Quality of completion and warranty claim.
 - Invoicing issues or delays.
 - Regular on-site inspection issues.
 - Failure to meet reporting requirements or uphold contract terms.
- What if a contractor is not meeting performance standards?
 - Grantees should work with their Legal Department to develop a written policy and procedure for disqualification.
 - Performance expectations should be clearly communicated to contractors in advance and all issues documented in writing.
 - All contracts and agreements should include performance standards and provisions for contract termination and disqualification from the program.

Repeating the Prequalification Process



- 2 CFR 200.319(e) states that if you are using a prequalified list of contractors, the list must be kept current and contain a sufficient number of contractors to ensure fair and open competition—this means periodically repeating the prequalification process.
- Applications may be accepted on either a limited basis (such as annually or every 6 months) or ongoing basis.
- If using a limited application period, keep a waitlist of contractors who inquire outside of the application period and notify them when the next application period opens.
- When a grantee is just starting out, the grantee may want to accept applications on an ongoing basis to ensure there is sufficient competition.
 - Even if applications are ongoing, repeat public outreach efforts on a regular basis to maintain compliance with applicable public notification requirements.



Introducing Construction Unit Pricing

How Unit Pricing Works



- In a unit-priced contract, a contractor prices individual portions, or units, of work to estimate a total project cost. Each unit price is based on several variables, in combination or on their own, such as materials, labor, and overhead.
- Industry standard construction estimators develop unit pricing based on regional construction cost data. This data establishes a preliminary cost estimate (not final cost) for what a program can expect general contractor pricing may come in at.
- Unit pricing data establishes a basis for cost reasonableness, but the resulting estimates must be competitively bid in order to prove or refine the estimate so that a contractor award may be determined.
- If the scope of a project needs to change, either at the start of or during construction (“change orders”), pre-established project unit costs determine the price for a change order.



What Are The Benefits Of Unit Pricing?



- Reduces administrative burden on both contractor and grantee by avoiding the need to establish cost estimates and obtain bids for each individual project
- Provides a clear and consistent approach for establishing cost reasonableness
- Reduces disputes over price and can avoid the need for a cost analysis if change orders are necessary

Where Does Pricing Data Come From?

- Construction line items can be priced by using various types of standardized cost estimating software or systems.
- Unit pricing data may be local, regional, national or based on different types of codes and requirements—Regional data will be most fair and reflective of differing market conditions across the state.
- Unit pricing data can be customized or modified for specific market conditions or project needs.
- Grantees may purchase data from a cost estimating service, hire a construction estimator (must still document the basis for the estimates) or use recent cost data from similar types of projects.



Cost Estimating System Considerations



- The cost estimating tool or method must accommodate various construction types, methods, and materials that may be used by contractors prequalified for the program.
- Less common scope items might not be included in cost estimate pricing guides and, therefore, the price must be established using an alternate method (e.g., contractor pricing proposals).
- The estimating tool must be able to accommodate updates and revised pricing.
- Consider the system's ability to export or interface with the final construction budget.

How Should the Grantee Manage Unit Pricing In the Program?



- Program procedures should describe how and how often the unit pricing model will be updated.
- New line items can be added and tested with prequalified pool as needed.
- Unit pricing model should be updated with the grantee contractor pool at least annually and maybe more frequently if significant market shifts occur.
- Even if the RFPs include maximum limits on profit and overhead, they still should be included in the price proposal (rather than unit priced) to encourage fair and open competition.



Awarding Bids From a Contractor Pool

Steps in Awarding Bids from Contractor Pool



1. Refine Unit-Based Pricing
2. Develop Estimated Cost to Repair
3. Notify Contractors of Bid Opportunities
4. Hold Pre-Bid Meeting
5. Receive and Review Bids or Proposals
6. Document Cost Reasonableness
7. Award Contract



Refine Unit-Based Pricing



Grantee's proposed unit price model should be refined or “proven out” by the pool of prequalified contractors, finalized, and implemented on subsequent project pricing proposals:

- 1.The unit pricing methodology and complete list of scope items should be provided to all prequalified contractors prior to any projects being bid out.
- 2.Contractors should independently submit one-time responses on proposed pricing line items and the grantee should take the average or lowest accepted unit cost as a baseline for costs going forward.
- 3.Contractors still bid on individual jobs but only to verify the scope is accurate and to compete on pricing for profit, overhead, general conditions, and non-unit priced scope items.
- 4.Change orders for standard line items are managed by program-established unit costs.

Unit-based Pricing And Cost/Price Analysis



- An independent cost estimate is required for every procurement action prior to solicitation to help document the rationale for the procurement method selected.
- Per 2 CFR 200.324(a): "Grantees must perform a cost or price analysis for every procurement action above the Simplified Acquisition Threshold, including contract modifications."
- Properly designed unit-based pricing serves as a cost analysis if the construction program incorporates the same cost elements within each project bid.
- Profit and overhead, alternative pricing or non-unit-priced items such as special environmental remediation or historic preservation scopes should still be competitively bid.

Profit, Overhead, and General Conditions

- Profit is necessary to support growth and incentivize performance, while overhead is the actual incurred cost of maintaining staff and systems to do business.
- General conditions are typically site-specific “soft costs” likely to be incurred differently at each project site such as travel distance, equipment rental, signage, fencing, safety procedures, and other expenses not already covered in the overhead or profit line items.
- Profit must be bid competitively or negotiated separately (2 CFR 200.324(b)).
 - It is also recommended that overhead and general conditions be bid competitively in a unit priced program as there is room for competition with these elements.
- Itemize profit, overhead, and general conditions separately to allow for a fairer and better “apples-to-apples” comparison.
 - Program may define maximum overhead percentage and allowable general condition line items.

Develop Estimated Cost To Repair (ECR)



- An ECR is a customized report that itemizes all repair components for a specific address and provides a pre-determined unit price for each item, resulting in a total estimated cost to complete the work.
- To establish the ECR, three things must be defined:
 1. Program parameters (What work does the program allow?)
 2. Project scope (What work is needed at this address?)
 3. Unit pricing methodology (How much might it cost?)
- The ECR is an independent cost estimate and establishes what is necessary and reasonable documentation as required per 2 CFR 200.404.

Notify Contractors Of Opportunities To Bid



- Notify all pre-qualified contractors able to participate in the region of the project according to the notification system you set up.
- Notification should include:
 - Brief overview of project and where the complete bid package can be found if not included with the notification.
 - Bid submission deadline.
 - Time, date, and location of pre-bid meeting and bid opening (if holding public bid opening).
 - Whether participation in the pre-bid meeting is mandatory.
- Place documentation of the notification in the project file along with a copy of all bid solicitation documents.

Items To Include In Project-specific Bid Package



- Invitation for Bid with submission details and relevant deadlines.
- Project specifications including any environmental remediation and historic preservation needs.
- Final Estimated Cost to Repair (ECR) scope. (Don't include pricing if not using a pre-established unit based pricing model.)
- If unit pricing will be used, the ECR scope should include unit prices for labor and materials. Bid package should allow for contractors to review scope and propose any adjustments with additional or alternative pricing using the approved unit-based pricing schedule, and propose their profit and overhead. (This saves all parties time and effort and simplifies bid award).
- Wage determinations and federal labor standards (if applicable).
- Section 3 project implementation documents (if applicable).

Hold the Pre-Bid Meeting



- Recommend reviewing the project specifications at this meeting, along with an overview of Davis Bacon and Section 3 requirements, if applicable, and any other information that may affect the bid amount.
- Meeting may be remote or in-person. If you choose to make participation mandatory, be sure to communicate this in the bid solicitation documents and notifications.
- Depending on the type of project, it may be appropriate to hold this meeting at the project site. Again, the location of the meeting should be clearly communicated in the bid package and notifications.
- Have attendees to sign in. Retain the sign-in sheet in the project file.

Receive and Review Bids or Proposals

- If using sealed bid method of procurement, you must hold a public bid opening for each project above the Simplified Acquisition Threshold (or state/local threshold if lower). Retain copies of all returned bids and bid tabulation in the project file.
- If using RFP method of procurement, evaluate returned proposals according to established rubric. Retain copies of all returned proposals and evaluation sheets in the project file.
- A grantee must accept bids/proposals from any prequalified contractor in your pool.
 - It is not necessary to accept bids/proposals from contractors outside of the pool. It is recommended, however, that you add them to a list to be notified when the next prequalification period opens.

Document Cost Reasonableness



- Cost reasonableness should be documented using the same type of analysis that was used for the independent estimate. For example, if a price analysis was used for the independent estimate, this approach should also be used to document cost reasonableness.
 - Exception: If a price analysis was performed for the independent estimate and only one qualified bid was received, it would be necessary to perform a cost analysis to document cost reasonableness if rebidding or additional solicitations cannot be obtained.
- When using unit-based pricing, the grantee will only need to document cost reasonableness for the profit and overhead in the original contract (and any non-unit priced items). The project file, however, should include the unit price list and contractor feedback regarding line-item adjustments, scope of any contract modifications, cost analysis and supporting documentation as applicable.



Award the Contract

- The parties to the contract may include any combination of the grantee, the prime GC, and the homeowner, depending on how the program is designed. Tri-party agreements are the preferred option.
- Grantees should provide any contract templates and should review the final executed contract.
- All contracts must include the applicable terms of Appendix II of 2 CFR 200 as well as other terms and conditions applicable to CDBG-DR projects.

A photograph of the St. Louis skyline, including the Gateway Arch and the Old Courthouse, framed within a white hexagonal border with a drop shadow.

Checking the Debarment Status

Debarment Overview

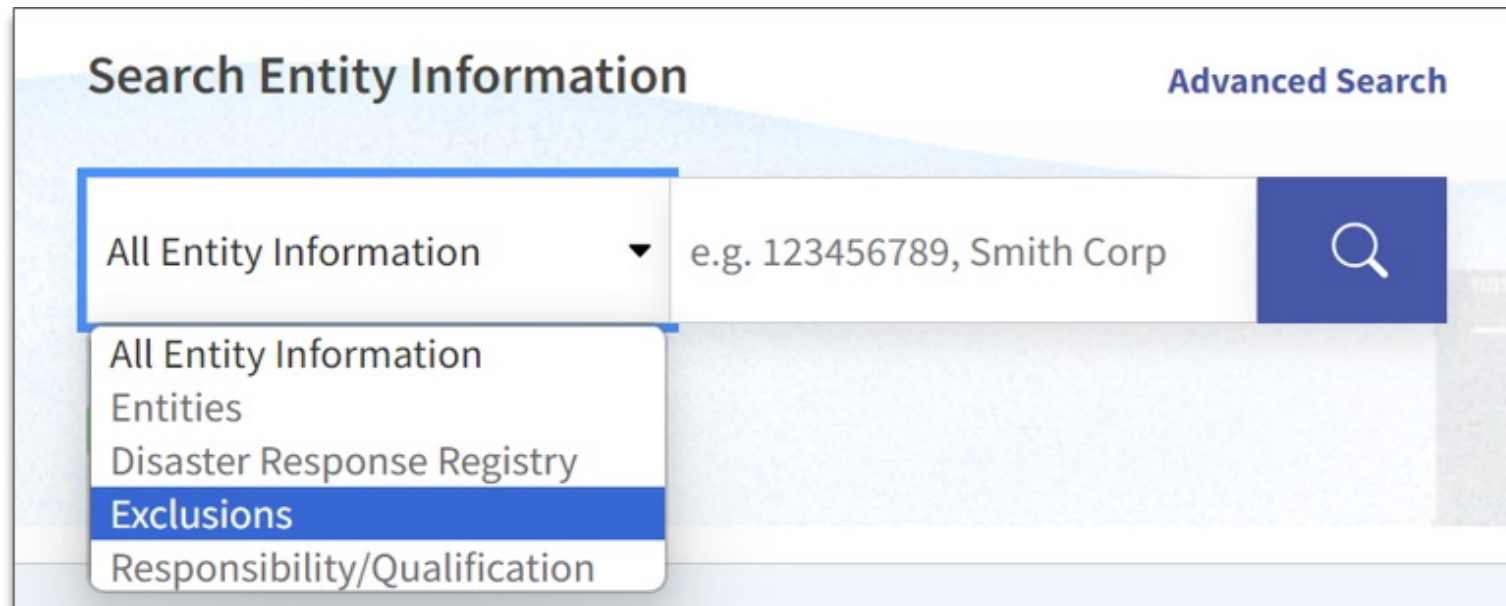


- Contractors can be debarred for things like fraud, misconduct, compliance issues, or poor performance.
- Debarment means contractors cannot be awarded or participate in contracts.
- To verify a contractor is not debarred, grantees must search for an active exclusion in the System for Award Management (www.sam.gov).
 - Vendors will show up in an Active Exclusion search even if they do not have a Unique Entity Identifier (UEI).
 - It is not necessary to sign into sam.gov in order to view active exclusions.
- Grantees must also perform state and local debarment checks, as applicable.


How to Do a Federal Debarment Check



1. Go to <https://sam.gov/content/entity-information>.
2. Select "Exclusions" from the Search Entity Information dropdown menu.
3. Print out or save a PDF of the results and place in project file.



Search Entity Information [Advanced Search](#)

All Entity Information ▼ e.g. 123456789, Smith Corp 

- All Entity Information
- Entities
- Disaster Response Registry
- Exclusions**
- Responsibility/Qualification

Tips For Avoiding Working With Debarred Vendors

- Check debarment at least twice during the project – prior to awarding contract and again before final payment is made.
- Every contractor and subcontractor on a project must be checked for debarment.
- Require contractors to certify with their bid or proposal that they are not currently debarred and are not aware of any debarment proceedings against them—debarment can take a long time and contractors know it is coming.
- Work with the legal department to include a contract clause that can address if the contractor is found to be debarred after construction has begun.

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Reducing Administrative Burden Takeaways

Reducing Administrative Burden Takeaways

- Establishing a prequalified contractor pool makes the bid and contracting process more efficient for both parties.
- Utilizing unit pricing in contracts will streamline the bidding process associated with each project and create more uniform pricing when dealing with at scale programs.
- Prequalification, unit pricing, standardized forms and procedures create more consistency and better participation with the contractor communities.

Resources

- 2 CFR 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1>
- Buying Right CDBG-DR and Procurement: A Guide to Recovery: <https://www.hudexchange.info/resource/5614/buying-right-cdbg-dr-and-procurement-a-guide-to-recovery/>
- Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients: https://www.hud.gov/program_offices/cpo/grantees/cstprice
- Overview of Cross-Cutting Requirements: <https://files.hudexchange.info/resources/documents/CDBG-DR-Crosscutting-Federal-Requirements-Overview.pdf>
- System for Award Management: www.sam.gov
- 570.502 – Applicability of Uniform Administrative Requirements: <https://www.law.cornell.edu/cfr/text/24/570.502>
- <https://www.gsa.gov/policy-regulations/policy/acquisition-policy/office-of-acquisition-policy/gsa-acq-policy-integrity-workforce/suspension-debarment-and-agency-protests/suspension-debarment-faq#Q2>

A photograph of the St. Louis Gateway Arch and the city skyline, framed within a white hexagonal border with a drop shadow, set against a green and blue geometric background.

Questions and Answers

A photograph of the St. Louis Gateway Arch and the city skyline is framed within a white, irregular hexagonal shape on the left side of the slide. The arch is a large, white, catenary-shaped structure that dominates the left side of the image. In the background, the city skyline of St. Louis is visible, including the Old Courthouse and other buildings. The American flag is also visible in the foreground.

Thank You!

If you have any questions, please feel free to send an email to ODR's Policy Division at ODRPolicyDivision@hud.gov.

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Next Session

The next sessions will begin at 1:15 p.m. CDT.

Advancing Local Resilience: Explore
Opportunities to Leverage CDBG-DR Funds:
Grand Ballroom DEF

Enhancing Accessibility: Navigating Reasonable
Accommodations in Housing: Grand Ballroom
ABC