

CDBG-DR and CDBG-MIT Grantee-Led Sessions

**8: Creating Effective Request for Proposals (RFPs)/ Request for
Quotations (RFQs): Procurement Pro Tips**

Thursday, April 1, 2021

Olivia Healey: Thanks, John. Hi, you guys. Welcome to our session for today. My name is Olivia Healey and I will be joined by my co-host, Scott Ledford. We're really excited for the session, and concluding the session, we'll have one more in our series. And we really hope to see you there, and can't wait for you to hear about all the good content we have today. For today's session, our presenter will go through their full content, and then we will answer some questions that we received from the questionnaire, and answer any questions that you guys submitted into the Q&A box throughout the session and during that portion of our session.

With that said, let me introduce our speaker formerly. Eric is the legal director of the South Carolina Office of Resilience. The newly created Office of Resilience is the successor of the South Carolina Disaster Recovery Office. Eric has been the lead attorney for South Carolina's disaster recovery office and its recovery effort since the occurrence of the 2015 flood disaster. He's been involved in procuring vendors for the 2015 flood disaster, Hurricane Matthew in 2016 and Hurricane Matthew in 2018.

He has also procured expert flood studies for South Carolina's MIT program. Eric has more than 20 years of experience in complex construction defect litigation. Eric had asked me before today's session about how long he has to present. We told him 25 minutes plus a few minutes, and he told us to never give a lawyer a little more time. So with that said, let's have our stopwatches out and see how well he does. Eric, it's all yours.

Eric Fosmire: Thank you, Olivia. And good afternoon, everybody. Again, I'm Eric with the South Carolina Office of Resilience. Olivia touched on the programs that we have running right now. And I just want to visit those very briefly so that you'll know a little bit of our background and where I'm coming from. Our 2015 flood is about 99 percent construction complete. And we should complete that program this summer, and get into warranty runoff and complete the closeout process thereafter. Our Hurricane Matthew program is around 93 percent complete.

We'll finish that before the end of the year as far as construction goes. And then we're into warranty runoff and closeout on that one. And for Hurricane Florence from our 2018 Hurricane Florence disaster, we are now deep into intake and moving into the construction phase there. Then with our mitigation grants, we are dealing with both sub-recipient and state run grants across infrastructure, and buyout, and plans and studies programs. So we'll have a mix of elements that we have there that we'll procure as we go forward through that process.

With regard to creating effective RFPs and RFQs, the guiding principle of procurement is fair and open competition. I am going to run through these initial slides fairly quickly. They are mostly there as a resource because this will get posted to the HUD exchange. So I'm going to move through these quickly to -- hopefully we can get into more detail because of the time constraints, as Olivia mentioned.

So you first to master the obvious here, determine the procurement rules that apply to your DR grant. You have to read, read, read and understand the applicable CDBG regulations, the applicable federal register, and then any waivers or alternatively requirements. And of course, you have to understand your own state procurement rules. The other thing you have to understand is your status as a grantee because your status makes a difference.

If you are a county or local government grantee, the rules of procurement are going to be different than if you are a state grantee. I would think everyone knows that at this point, but please be aware of that as you go through your procurement processes, because county or local governments are controlled by 2 CFR 318 through 326. State grantees, I suggest, that is what we do in South Carolina is follow your own rules and demonstrate your compliance with your policies and procedures.

And when we look at the requirements that occur under our South Carolina procurement process, it's actually a little tighter and a little more restrictive than our view of the federal procurement requirements. So tighter and more restrictive is good in our world. So that's the process that we follow. I would call your attention to 24 CFR 570 if you're a state. Pay attention to that. Procurement laws are state-specific, obviously.

So if I'm telling you anything today that contradicts with your state processes, then, of course follow your own processes. There's my lawyerly caveat. You have to have capacity. You have to make sure you have the expertise in procurement in order to successfully procure. And, if you don't either have it internally in your DR operation, then get it through -- most states all have a centralized procurement office. There are folks who live procurement every day in those offices.

So make them your friend and coordinate with them as far as your necessary procurement of the disaster recovery world. That knowledge and capacity for procurement itself is going to really be key to your success down the road as a as a DR operation, because if you fail at it, if you fail in the procurement process itself, the very best case scenario is you've only put your disaster recovery behind by maybe six months or so.

The worst case scenario is that you're going to be tied up in protests and you're going to be years down the road. And you may be in a situation where, because of that procurement itself, you're going to owe money back to the federal government. And that is a losing proposition. So if we get it right up front, and you don't have to go through duplicative procurements, you're on the path to success in your disaster recovery program.

So you can't stress that enough as far as getting it right at the front end; because as you listen to the speakers over the last several days, almost to a person, you hear a common theme about planning, thinking, standardization, and following the processes, and following the rules. And that applies wholeheartedly when you're talking about procurements. And then you got to learn the lingo. The lingo is also state-specific because different rules might apply because of what we're talking about, requests for proposals, RFPs.

Most everyone understands what that is. RFQs can be tricky, because RFQ can mean request for qualifications and RFQ could mean request for quotations. And that is a context issue, depending on where you are and what you're procuring. And then you have RFIs, requests for information. These are some definitional slides coming up. I've already covered that as far as understanding what you're procuring.

Requests for proposals: typically used when qualifications and price are the keys in evaluating the proposal. RFPs are typically for request for services. And you are usually talking about -- where it's most effective, you're usually considering fairly large scale services, whether it's construction services, administration services, project management, things like that. An RFP is probably the way to go in your procurement process.

RFQ is a request for qualification and that's mostly used for services, such as professional services as an engineering or architectural firm. It's a competitive negotiation method. Price is not such the key point in an RFQ. The quality of what you're procuring is the key. As long as what you are procuring falls in a range that's cost reasonable, you will be good to go on an RFQ when you're talking about those types of services. But again, you're looking for quality with a cost reasonable element to it.

The price itself is not the most important factor. Requests for Quotations, RFQ -- so you got requests for quotations, that's an RFQ. Backing up one, request for qualifications are an RFQ. When you're talking about an RFQ with Q standing for quotations, you're talking about procuring a product. I need 30 Dell Inspiron laptops and 50 iPhone 11s. They're all you care about. You know what the product is and all you care about is the price.

RFQs are the way to go when all you are procuring is a product at a price. And then request for information, RFI; typically, when you're dealing with an RFI, you are in a world of not knowing exactly what you need. And an RFI is a way to develop resource knowledge of what's available out there. Most folks think about it in the IT world, but here it can be really valuable for any type of element where you are looking for a developing your own knowledge of the resource as far as what's available and what might serve you best. Again, RFIs typically are in the IT world.

But it could actually come into play when you're talking about looking for a particular type of consultant or what they might be able to offer for you. So [voting ?] down to RFPs and RFQs, when you look at the commonalities that you're dealing with there, we're talking about a description or requirements, and a scope of services. You're looking at payment metrics, factors and sub-factors that are important to you as the procuring entity.

And then you're going to have the minutia of the detailed instructions and the boilerplate that would really come from your state procurement office, or internally, if you have all that and you're aware of all that. That also becomes part of that procurement package. And then, of course, there's a deadline for submission and following through with your procurement process. So that's some of the definitional elements as it relates to procuring and procurement.

Here's a typical procurement process. This should really look familiar, I would think, to just about everyone who's viewing this presentation. There's various steps that you'll go through as far as drafting an RFP, coordinating with your procurement team. I'm not going to read the slide to you. What I want to emphasize to you is that first part where you're talking about drafting the RFP. The prior presentation with Ann Schmidt of Iowa talked about data and the communication processes.

Well, that data becomes incredibly valuable to you when you are trying to develop what your recovery is going to look like, because you ought to be thinking about your recovery as soon as your disaster occurs. What's the scope of it? Is it likely that you will get DR funds? Push the FEMA IA and PA data. Learn that you should have intimate knowledge of that data so that you can be effective in deploying your recovery.

And following up on what Ann said, if you're not getting a response through a community that's impacted, push them out there to apply for that FEMA data, because that will more accurately capture the scope of what you have suffered. And then that scope of what you've suffered can be analyzed, and then you can get to your unmet needs assessment, depending on what the response has been to that disaster.

And then from there, you can procure your recovery. So that thinking and planning element of your RFP and your recovery becomes so critical. And that data should really become a driver for what you're actually looking for, and how to get from A to Z, and what elements of your affected area can be assisted with these DR dollars. So again, I'm not going to read the slide to you, but that's the process of what I want to focus on, is that initial part of drafting the RFP.

So it doesn't matter how much money you have in your grant. No matter -- and I think this is common across all of us as grantees; no matter how much money you have, it's never enough. Now you end up with that much disaster and this much money in almost every circumstance. If that's the case, then you really have to focus on where you can be most effective in helping your community recover. What is the biggest unmet need?

Because in our analysis of it, if you try to do too much, if you get spread too thin, particularly if you have a smaller grant, you're going to end up with a recovery that is not going to be as satisfactory or not going to be as complete, because if I think if you're trying to satisfy everybody, then you're going to end up satisfying nobody. And use your data. As Ann was talking about, dealing with the political elements of trying to direct where your recovery goes, the responses show where the data says the most damage is.

Then try to take that data to figure out where your most vulnerable communities are. And then use that data to drive your recovery as far as what you're going to go out and procure to assist in finishing out your recovery. So let's get to the very basic napkin math. You have a grant award. Take out your administration costs. Take out your planning costs. You talk with other grantees as far as what to expect from a vendor for providing disaster recovery services, because in our recoveries, we've used a single point implementation vendor and have found that to be very effective.

In the next slide, I'll cover the various modes of recovery that you typically see out there. But when you take your estimated fees for your vendor, based on what is happening out there in the industry, the remainder is the value you have for direct costs and direct construction. So when you put out your RFP for services, or your RFP for construction services, you have got to know the dollars that you're dealing with so you can be very accurate, because for goodness sakes, we can't overspend our grants, otherwise we're paying it back.

So you may want to build in a little cushion that you could later move in or negotiate how to handle those extra dollars if you're adding it to the construction side. But if you hold off a little reserve to move into the construction side later on, I don't think you would ever have a problem with that because you're stretching your recovery. But figure out your dollars.

That is so instrumental in analyzing how effective you can be, whether you're dealing with a less than \$100,000,000 grant, a multi-hundred million dollar grant, or if you're one of those communities that has had a billion-billion-billion-dollar disaster, unfortunately, then you just have to know where your dollars stand and how to apply those dollars. So after you get your napkin math math done, you then need to figure out what mode are you going to be in as far as your recovery? How are you going to approach it?

If you're on the left-hand side of this common recovery model, the state handles everything. If you are, in fact, that state that has a very skilled -- and you're staffed up, and you have a consistent organization to deploy recoveries, then maybe you shouldn't be on this webinar because you've got it figured out and you're covering it well. If you move to the right as we get through the economic recovery models, you could have split vendors.

You could have a state that contracts with one vendor for intake and eligibility services, and then one or more construction vendors to deploy the recovery and actually do the construction work. That can be very effective. I know there are grantees out there who do that. You could get to a little finger pointing when it comes time to take responsibility for certain things when you're transferring projects out of intake and eligibility over into construction.

But you just have to analyze how you are going to be able to manage that. You can have a single vendor, a single implementation vendor, who was hired to be responsible for the operation A to Z, a turnkey vendor, but you have to manage the heck out of that vendor and make sure they are delivering what you contracted with them to do. All of this, as far as looking at the way to deploy your recovery, becomes important, obviously, as to how you procure it.

So you have to look at your management capabilities. And my suggestion is, procure as big as you can manage. And I would try to procure at the highest level I could, because if you're out there and you're not procuring until you get down to the project level, I respectfully suggest that you are setting yourself up for a failed recovery; because if you get down to a situation where, for every project, you're getting three bids and you have thousands of folks that you're trying to serve, that is just too unwieldy.

And it's going to be a lengthy process and it's going to take incredible staff time. And I think that is a recipe for disaster. So procure at the right level. And it takes a lot of self-awareness of what your capacities are as a state and as a management team in order to figure out exactly what would be the best way to go forward in procuring your folks. And then, you know, think about -- on Tuesday, Heather LeGrande from Texas was talking about how much time they spend in planning.

And that planning and thinking element will result in a successful recovery if you spend adequate time on that planning. Reverse engineer your program. Look at what your goal is in

your recovery, and then reverse engineer it. How are you going to get there? And how long should it take for you to get there? And then, in order to get your reverse engineering complete, then you set the table through your procurement of what your requirements are and what your needs are and impart a little bit of what your expectations are.

But expectations aren't contractual. But you need to lay out your entire framework in your procurement so that the entity that you're procuring has no doubt about what your requirements are. And I liken it to a chess match in a way, because if you're familiar with chess, you start out with your chess board and all the white pieces are in the first two rows that are closest to you. All the black chess pieces are on the other side of the chess board closest to your opponent.

But that's not the way you should start out in procurement, because you're setting the table of what your requirements are. You are setting the table of what your goals are and what you expect your procurement to achieve. So you are starting ahead of the game by laying out your entire framework of what your expectation is. So your procurement should look like a deployed chessboard.

Your queen should be out roaming free. Your bishops should be out there. Your knights should be forward. Your rooks should be pushed forward. And you have set up the whole table while the other side is still in their first two sets of squares. And that's the way a procurement should look. Have all your requirements and metrics laid out so that there's no doubt for those who are going to respond to the procurement about what their expectations are and what they should be doing in order to meet your requirements.

So what are some considerations? The system of record; your system of record will save the day if you have a good system of record. Do you have one yourself? If you are a state that has suffered through numerous disasters, maybe you have built your own system of record, as we heard from New Jersey yesterday. If you are having occasional disasters or only dealing with one or two that are spaced far apart, maybe you have your vendor bring a system of record that is extremely capable for all the elements that you need.

But really working through that system of record of what you need to keep in there, and how you are going to use that system of record to work through your processes from eligibility to completion, whether it's infrastructure or whether it's housing recovery, those become extremely important to understand what you should keep in that system of record. And be aware of what the retention rules are. What your own state retention rules for dealing with money, for contracts that deal with money?

Understand what HUD's retention rules are, for how long you need to keep a system of record active after a grant. Most vendors out there know, but if you have a vendor that's going to pack up after close out and you don't have access to your data, then you're in trouble. So make sure you have your system of record and your control over that for the length of time that is required, both on your own, under your own state requirements dealing with money, and with the HUD requirements for record retention. What are your outreach targets?

How do you expect to get to those folks that need help? That should all be explained in your procurement of what you need the vendor to do in the intake process, if you're not doing intake yourself. Look at who your vulnerable communities are, where are they, how you're going to get to them? We've done everything from AM radio ads. It was mentioned earlier that there are a lot of communities that don't have internet access.

All of us, who are on this, are extremely fortunate in many ways. But the communities we serve aren't, and they're not going to have internet access. We've had folks go door to door; hanging door hangers on the doors of the affected areas; AM radio stations. We've had one of our deputy directors, who's now our chief resilience officer, we call him Bishop Ben; he spent every Sunday in a church for about two months straight explaining our program to that affected community.

And it's amazing the response that we got from the faith community who were very receptive to it, to knowing about what was available through disaster recovery. But that becomes part of your procurement because what are your outreach expectations? And that should be set up even in your requirements. What's your eligibility criteria? Who has responsibility for duplication of benefits? Probably one of the key tips I hope you take away from this is transfer duplication of benefits to a vendor. I think duplication of benefits is high risk.

The Stafford Act, in making sure that you're not paying for something that someone has already been paid for through other funds, whether it's federal funds or private insurance or comparable services from VOADs or LTRGs; that analysis is tricky. It needs to be complete. And it needs to be documented in your system of record. So my recommendation when you're procuring any element of your recovery is to make sure you have some contractual provision that transfers duplication of benefits responsibility over to a vendor, and hold them accountable for it.

Because I think that's a high risk proposition. Environmental reviews; move to the next slide, apologies. Make sure you understand what environmental review process you're going to bring to bear. In a housing recovery, like ours have been, a tiered approach works really well. Ann Schmidt from Iowa mentioned a few moments ago, a programmatic agreement. Can't stress that enough, of having a good PA in place to help deal with the environmental processes.

So that's one thing that you could do ahead of time. If you don't have that PA in your local emergency management or FEMA, your state counterpart to FEMA typically has the PA in place. Make sure you have those arrangements made. Strike that approval with HUD so that your programmatic agreement is in place, so that you can offer that to your vendor as far as the environmental processes go. If you're dealing with infrastructure, in most cases, you're going to be dealing with an individualized environmental assessment for that project and its impacts.

So that would be a little bit different. But know what your environmental concerns would be and address those in your procurement. Damage assessments, lead based paint assessments; how many are going to be necessary in a housing recovery in order to support your completed homes goal; in order to spend all the dollars that you have in your program? Those are elements that become really important to evaluating how you can successfully deploy this recovery.

And then, understand you are probably going to have to procure more of those than you are going to use because you're going to have a fallout percentage. You can have anywhere between 40 and 60 percent of folks who get to the eligibility that don't get into construction because they have either self-recovered, they've moved away, moved in with a relative, or had some other event occur. In many of the populations that we deal with that are socially vulnerable, that are our high priority applicants, you're dealing with elderly applicants who may have passed away.

So those are concerns that you have to be aware of when you are procuring, to understand that you're going to have some type of fallout percentage of eligible folks. Keep that in mind. And then another thing that we address in our procurement, as we refer to our housing quality standards, have a set. HUD has them on the exchange. But you can make your housing quality standards stricter in your recovery if you are trying to provide a resilient home for your applicants.

Initially, we started out with a straight asphalt shingle roof in our 2015 flood recovery, but then, you know, came to understand it a little better. And now we require an architectural shingle. It's heavier, it resists stuff, [lift ?] better, and it just performs better over time. So we were installing a product that would give a useful life of around 20 years. An architectural shingle, in most environments, we would have a life of 30 years.

Little things like that could make your home that you're building, or home that you're repairing, more resilient. You have to think of those elements as you deal with what will best serve our constituents, because you're not only trying to -- the resilience is so much of a key factor of making sure you have a product that is going to last a long time for that vulnerable person. Remember, you have to make sure what you're procuring is cost reasonable.

We could probably spend hours talking about cost reasonableness. And I think that would be a good segment for a future session in this process. And then, when you're procuring, what's going to be your payment basis for your construction services? Rehab is hard. But if you're going to do rehab work, then make sure you have a consistent basis for it. We use Xactimate software. It's an industry-accepted software for construction repairs and construction pricing, widely used in the insurance industry.

And there are plenty of other -- I don't want to become a product endorser in this webinar, but there's plenty of other software like that out there. Make sure it is an accurate tool and a cost reasonable tool. The thing we like about the product we use is that it's regionalized. Even in South Carolina, it's at least five; it might be seven regions. But it's regionalized and it's updated every month. So it tracks trends because anyone out there who's in construction knows that lumber prices are just outrageous now compared to where they were pre-COVID.

So it's something that we're all struggling with. But what is your payment basis going to be for your construction services? Have that specified and make sure there are no questions about it, because the clearer you can be about the various elements of construction, it makes it easier to just hold whoever's doing your work to that contract, or hold them to that basis. Then consider fixed pricing for commoditized work. Installing MHUs, purchasing and installing MHEs.

I think most states out there are coming up with a fixed price for that work. What's the cost for a single wide? What's the cost for a double wide? Certain types of double wides are more expensive to transport because they're wider, so there's an additional cost of just getting that thing down the highway. You've got to work out your pricing for those elements before you at least have a planning price.

You may have to adjust it once you get going in construction, but at least do the research and have a planning price so you know how far your recovery dollars are going to go when you procure that service. So commoditize. Everything you can standardize -- going back Heather. I think she talked about that quite a bit. Everything you can standardize in your process, the better off you are. Come up with the standard rate for a two bedroom, two bath home.

Come up with a standard rate. Come up with the standard plan, with maybe a little modification in case you're building one right next to the other. But come up with a standard plan for your homes that you're building. Come up with a standard for elevations. What's your price per foot for elevations? What's your cost going to be for wheelchair accessibility, for ramps, or a home with grab rails in the bathroom, and wheelchair accessibility in the bathroom?

All of that can be commoditized. Figure out what the price is, and you can put that in as your expectation for your procurements. In South Carolina, particularly in rural South Carolina, we have replaced more septic tanks than I think any other entity in the history of our entire state. And it was kind of funny. And I think one of our first technical assistance visits with the CPD team that came to South Carolina, we took them out to see some things in the field.

And some folks had never seen a septic tank before, had no idea what the purpose was. But when you deal with those elements, and you're dealing with them over and over, commoditize it, fix the price, and move out and get your recovery moving. So a couple more considerations. And I know I am pushing time. Olivia, you were omniscient about don't give a lawyer much time. So quality control, compliance, warranty, closeout; make sure you're covering those elements.

And I can't -- everything needs to be emphasized, right? But if you emphasize compliance, and your compliance team that goes out to the field, you'll get the quality that you need. And we are very big on compliance in our programs. We have four compliance specialists that are out in the field every day. We have a compliance manager and then a compliance director above them. And our compliance director is going to be in the field tomorrow dealing with a field issue with a constituent.

But that compliance aspect of it, what is going to be your compliance work up? How are you going to enforce all of these standards that we were talking about? How are you going to enforce those? And don't rely on just your local building official. You need to staff up your compliance team in order to adequately, I think, complete your disaster recovery processes because you're the one that's signing off on it. The local building official is not the grantee.

They're not the one that's responsible. You're the one that's responsible. So compliance and audit -- I won't even get to the audit function, other than to say our audit staff is aggressive. They're vigorous. And they do a tremendous job. And it's part of the reason why we've had an effective

program, because on their file touches, we are well over 100 percent of the -- based on touches to a file -- well over 100 percent of the files have been touched in the audit process, looking back to the contract, making sure we're getting what we're supposed to get in that process.

A couple more slides and then we'll get to questions. Reward results. Do not pay for effort, only pay for results. So when you set up your metrics, don't have effort metrics in there. Going back, if we went all the way back to the time and material, just run back to it real quick. If you go back here to different types, I didn't even talk about time and materials. I don't like time and materials because you're losing control at the time aspect of it, and you can have someone that takes advantage of you because they're controlling the amount of time that they put down for a particular item.

Now there's a whole bunch of nuance to that. But when you talk about time and materials, I don't like it. I think it's higher risk. I think it is an element that is more likely to be abused in the DR process than other elements. So when you talk about paying for results, don't pay for someone's effort in trying to build a house. Pay for the house that's complete. And we have metrics, have used some different metrics at different points in time, that help incentivize that.

At the end of this presentation, you'll have links to our -- you'll have my email address. You're welcome to reach out to me. You'll have links to our website where all of our information is out there. Our contract documents are out there. And our metrics are in our RFPs that are on the website. But one more I wanted to talk about was an incentive metric. And again, this is about paying for results. We have a metric in the Hurricane Matthew program where we were paying 12 percent; this is for the implementation vendor.

This is not cost plus. Out of the entire implementation of vendor fee, 12 percent of that fee was not going to be paid until all construction funds were expended. So that keeps the implementation vendor engaged. It holds a good bit of money toward pushing it further down the stream to the end of the contract and the end of the recovery. And it holds your implementation vendor in place.

So that 12 percent, the implementation vendor said, we think we can go quicker in helping you with your recovery. And we said, okay, put your money where your mouth is. Out of that 12 percent, if you can build X number of homes in this period of time, then you get two percent of that 12 percent earlier. So what's more important to a vendor than cash flow? Any business, cash flow is king. So if they can get two percent of that 12 percent earlier, there's an incentive to move along and get that construction done.

You have to enforce that you're getting quality construction, but that incentive is there. And then that 12 percent at the end is reduced to 10 percent. So you're not adding on to what they get. You're just giving them an opportunity to get to those dollars earlier. That incentive metric, it worked for the first metric, but it didn't work for the rest of them. So that's a little bit of a lesson learned.

But it's out there and it's a device I would encourage you to think about and explore to see whether that would fit your recovery. And let's get to -- if you do it and you procure it well, then

I know everyone out there has stories like this. But here's a successful result. That tree on that home, when we got came to do that damage assessment for that house, that family was still living in that home, with a tree on it, with no climate control, and tarps on the house, and mold and everything else you can imagine. And then the houses that we're building, their new home is on the right. And at that point, we will move on to questions.

Olivia Healey: Thanks, Eric. You did an incredible job of providing very sound examples and helping us dive into your head. And I really think you built a foundation where people can learn and build upon how to ask the right questions and how to dive in this process that you've outlined. The first question we're going to ask you is from our questionnaire.

And it's, based on your experience with specific language in the RFP and RFQ, do HUD reps look for during monitoring, and where should this language be posted? And some additional background to this was, I believe, on their state procurement websites as they go in to post the language, the field for characters gets cut off and not all of the information could be provided. So what is that specific language that is needed?

Eric Fosmire: I would create links to a separate document. If you have some type of character limitation, incorporate everything by reference. And that would include the regulations. That would include the requirements in the Federal Register. That would include your own state procurement requirements and processes. So that character limitation, I understand it could be problematic. I would create a link on my website that refer people to the website so that all those requirements would be there because there's certain boilerplate.

And there's -- this is hard stuff. And whether you have a \$2,000,000,000 grant or a \$70,000,000 grant, guess what? The same rules apply. So you have to have the same abilities, although we're different scale; you have to have the same abilities as the the \$2,000,000,000 grant entity. So you got to make sure all the appropriate rules and regulations are referred to, and identified, and captured, and that you're following them. I hope I answered the question.

But man, you can't get hung up on a character limitation. Create some link to get to the right stuff if your own procurement site doesn't allow enough information. And if that's all pre-bid, I would hope you'd have a pre-bid conference so that you could hand out that information, or give out a sheet with all those references in them, because that's our process. Put it out there, have a pre-bid conference. Answer any questions that come up in the pre-bid conference on the record on your procurement website.

I hope that's helpful. And please, if anyone has any questions and something's not clear, I may have botched something up. Feel free to reach out to me. My email address is coming up. I'm happy to respond.

Scott Ledford: Thank Eric. Next question for you: could you talk about your department's history with CDBG, DR, and procurement? How did timelines and expectations change over time?

Eric Fosmire: Sure. We end up with -- there are a lot of lessons learned for all of us. We try to move as quickly as we can through the procurement process. We try to keep it as tight a procurement package as possible. So our own experience is that our entity was stood up following the 2015 floods. And because we've had a series of disasters, and now the mitigation grant, we've been around for a while.

So through all these procurements, we started out under one department. We moved to the Department of Administration. Well, we had already had two procurements for the flood and for Hurricane Matthew. And then we went to the Hurricane Florence procurement. And the procurement specialist in our new department says this is a big deal. This is a lot of money. There's a lot of detail in here. This is going to take a year to procure.

And we just said, no, it's not. We can't be held up by that process because we've been through that process. And we've done it in three and a half to four months. And by, and for lack of a better word, bypassing that naysayer and dealing with the folks at the state procurement office, we were able to push the procurement through and do it within all the legal requirements, and without a protest in the going back to the three and a half, four month process that we're used to.

So as you learn these lessons and know what it takes, stick with what you know, and use your own experience to your advantage to move this procurement process forward.

Olivia Healey: Regarding professional services and the evaluation of fair and reasonable costs, for example, hourly rates, does HUD allow comparison to other historical professional service contracts?

Eric Fosmire: Of course, that's a better question for Jen. I think, in our process, we would look at what the market rate is for those types of services and make sure you're within range of those services. And again, let's go back to our state procurement office. When you're procuring certain types of engineering services, while it's handled in conjunction with state procurement, that actually goes to the state engineer's office.

So they know what the current running rate is for certain architectural services, for certain engineering services. And that can be part of your cost reasonable documents that you could fill out and write a memo to your project file saying that we considered X, Y and Z. These are the rates that are out there. We're picking this person because of these qualities and this expertise that is unique in the field. And that's why their rate is reasonable compared to others.

Jen Carpenter: Hey, folks, this is Jen from HUD. I just want to chime in. I would agree with what Eric said. I think the key here is not what HUD would allow, because luckily, this is one place where HUD doesn't have a whole bunch of rules about how you have to define necessary and reasonable. It really is a local process that you need to have as a grantee. You need to have a justification for why you think it's necessary and reasonable. Have that backup documentation. As Eric mentioned, using a market rate; where did that market rate come from? That's what HUD's going to be looking for.

Eric Fosmire: And document, document, document. Get your state engineer to write a schedule of costs that they've used before, that are reasonable, and make that part of your file. And then in your technical assistance visit, you'll have that available for that finance or the auditing team that might come along with a compliance visit later on.

Scott Ledford: Great, thanks. We may know part of your answer to this question, but let's tease out the other part of this. When is the best time to use time and material contracts?

Eric Fosmire: Oh, you're asking the wrong guy. I'm not a fan of those types of contracts when you're dealing with large scales. I like to think of bigger packages of commoditized work. Time and materials, to me, is a per project issue; and, to me, would be more effective on a very small scale. So to me, again, this is just an opinion. It's a scalability issue. I would stay away from it for larger groups of effort. If you can commoditize that effort, then do it.

If you're talking about very narrow streams of activity, then maybe you pay for time and materials there. If you haven't guessed it already, we're a little bit of control freaks in our program. And when you let go of that time, you are letting go of control. And that's why we are risk averse on that on that issue.

Jen Carpenter: And this is Jen again. I would just throw in my two cents to say that our recommendations are usually to use those time and material contracts on the admin side. So if you're procuring someone to help you put together an action plan or help you write some policies and procedures, that's when a time and materials contract makes a lot more sense.

Eric Fosmire: Obviously much better put, when I would talk about smaller scopes of work or smaller groups of effort. Thank you, Jen. That's what I was referring to.

Olivia Healey: Great. So the next question that we'll ask you is, how do you address and consider conflict of interest concerns when an RFP/RFQ is being developed?

Eric Fosmire: Avoid them, number one. And stay away from -- the disaster recovery world, when it comes to consultants and available resources, is very much a dog eat dog world. And I think there is a temptation by many entities out there, whether they're a sole source implementation vendor, or they're providing specific lines of services in disaster recovery; I think there's a temptation for them to want to get their foot in the door and come talk to you after your disaster occurs, to let you know what's available, what they can do for you down the road.

And that may be all well and good. We try to nip that in the bud. If we have someone coming to say we provide aerial drone services so that you can survey your damaged neighborhoods, and do X, Y, and Z, and it will help you with your targeting and your recovery. And they want to come out and tell us how good they are at that. Well, if we want aerial drone services, we'll procure it. And if you come and start to talk to me about it, or anyone in our op about that, then you run the risk of disqualifying yourself.

And we would disqualify them as a bidder down the road. So you have to be conscious, at all times following a disaster, of folks who are looking for that opportunity, because they're selling a

product or selling a service and they want to get their foot in the door. But let their foot in the door be the procurement process. Let them respond to that instead of creating some type of thinking they have some advantage.

Because if they're trying to come talk to you early, then they are looking for an advantage. And avoid it. Just tell them, if we needed their services, really appreciate your call, but we'll post them. And here's where you pay attention to that. I hope I answered that. But it's a dangerous area. And if you get in a situation where a conflict exists, it has to be disclosed. You're going to botch your procurement. And then you're going to have to start all over to cure the conflict.

And when you're going through curative processes like that, it's process. It's delay. Avoid it. You can avoid it by having very tailored communications and then sticking to it; having guidelines for your staff. Don't go out to lunch with a consultant that's coming by to start talking, to try and sell you on something. It's just too risky. You end up in a situation where I think you potentially would end up disqualifying them.

And if you tell them that in that first phone call, our experience has been that we're get a thank you very much, we don't want to be disqualified, and we'll respond to the RFQ or the RFP that you're going to put out.

Scott Ledford: Great, thanks. First, you get a little bit of feedback. Your presentation has been great. Now the question.

Eric Fosmire: Oh boy.

Scott Ledford: Can you please talk some more about why you would ask a vendor to handle the duplication of benefits if you believe that's a high risk area?

Eric Fosmire: Yes, because that's one area where you are paying money back to HUD if you get it wrong and if you don't have that information adequately analyzed. So you have to help your vendor out, of course. You're the one -- you're not going to get FEMA IA -- your vendor can't go get the FEMA IA data. The state entity is going to have to get that. You don't have to get into a confidentiality sharing agreement with the vendor about the use of that information.

But if in that duplication of benefits analysis, if you didn't account for it and you are duplicating the benefit, you pay it back. You're not going to get it from your LMI applicant. You could try. You could have a subrogation agreement in place to say they have to pay back money that they end up duplicating. But that's not going to work. That's not practical. And that's getting it back after you've paid it to HUD, or paid it back to HUD.

So gathering the FEMA IA data; making sure you know who has received checks from FEMA; having a good process on your intake and eligibility of asking folks, and you could even get this under oath if necessary, if they've received any insurance payments. Who's your insurance carrier on your home? Writing a letter to that insurance carrier to see if they paid any dollars under the 2015 flood claim. Get the NFIP information. SBA has been a terrific partner of ours in South Carolina and we really appreciate how cooperative they are.

So those are the basic elements. And then you can see if you need to count any volunteer organization work towards the value of what has been performed at that house in response to the recovery. We had a situation where our -- we had gone through all the process. They were eligible. And our repair contractor is going to that site for the first day of work on a rehab job on that house.

They get there and a volunteer organization, I think they were Mennonites from Pennsylvania down working in South Carolina following the flood; they get to the house and the Mennonites are putting the roof on the house. And they're like, whoa. So we can't we can't duplicate the work that the Mennonites are doing on the house. So all I'm trying to say is, that's so risky from a dollar standpoint that, if you blow that, that's a real hard line. I mean, the Stafford Act is the Stafford Act. And you're going to pay those dollars back for missing it.

So that transfer of responsibility, of making that vendor handle that aspect of it, I think is a safety net for you. And that -- have an agreement with them that if they screw it up, they're ending up paying you and there's no net loss to your program. Because if it's screwed up, it's going to be paid back. There's no question about that. There's not a negotiation. It's done. The money is owed and you're going to have to pay it back. So you can at least get an indemnity agreement in place for the person who's calculating that for you.

And they're going to owe that to you so that there's no net loss in your program for those dollars. Because, again, it might have been Heather on Tuesday mentioned if -- the grant's the grant, and so many of our disaster recovery operations are temporary grant entities or are only limited for the grant. So if you have overspent it, or you miss DOB, you can't pay it out of other grant funds. Where are you going to go?

You've got to go to your general fund in your state and ask them to pay that money for you. Otherwise, it's going to be a sad Christmas at your house because you owe all that money yourself somehow. But in any event, that's why I say transfer it, because it's such precise work and it has to be done right. Get an expert to do that analysis for you.

Olivia Healey: Thanks, Eric. We're running close on time, so I think we'll end the Q&A here and transition to your resources and closing us out for our session today.

Eric Fosmire: Thank you.

Olivia Healey: Would you like to speak to these resources or do you want me to just run through them? I know you mentioned them during your presentation.

Eric Fosmire: I would just mention, if you just Google SC storm recovery, that'll take you to our storm websites. So you would have resources there from the 2015 flood, Hurricane Matthew, Hurricane Florence. And in that list of resources, you'll get to our RFP if you want to see the metrics. You want to talk to anyone in our team about the metrics, we're happy to engage. If I need to pull in someone else on our team to help respond to that inquiry, then we can do that.

But those are resources for you. And as has been mentioned numerous times, the HUD exchange is a heck of a resource. You should utilize that with great regularity because there is so much good information on there: forms, checklists, things to cover, an identification of the sticky wickets that you may run into that are important to know. I would encourage you to hit those resources.

Olivia Healey: Great. Well, thank you again for all of your time and all of the expertise you gave. You had a lot of compliments coming into the Q&A box. So we're really grateful for your presentation and expertise that you were able to share today. Have a good one, and we hope to see you guys in our last session in 30 minutes. Thank you for your time and you guys can close out of today's session. Thanks.

(END)