



# **Texas General Land Office**

## **Community Development and Revitalization**

“The GLO stands ready to help our state maximize the use of this disaster recovery funding to build back stronger and more resilient communities.”

~ Commissioner George P. Bush

# Sealed Bid Presentation (8/24/2020)



## AGENDA

The presentation will cover the following topics:

- Introduction
- Award Phase
- Pre-Bid Phase
- Bid Phase
- Post-Bid Phase
- Contract Phase
- Best practices and common pitfalls

# Sealed Bid Procurements



**The full regulations concerning sealed bids has three subparts:**

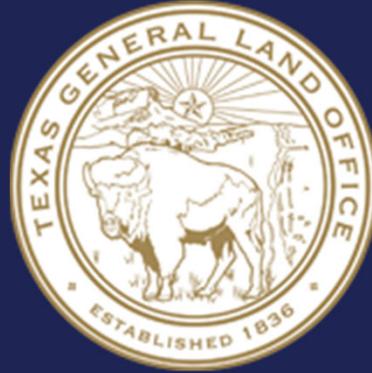
**§200.320(c).** Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

**§200.320(c)(1).** In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) 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.

**§200.320(c)(2).** If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and



# Award Phase

# Subrecipient Award Considerations



1. Receive notice of ability to apply for GLO funding
2. Review procurement policies and procedures manuals for 2 CFR 200 compliance
3. Review proposed project with key stakeholders to discuss details and scope of work (SOW)
  - a. Requires acquisition of property or equipment?
  - b. Negative environmental impacts?
  - c. Subrecipient capacity to provide engineering and grant management to oversee the project?
  - d. Surrounding communities that have performed this type of CDBG activity?
4. Advise Engineer on creating Line Item Scope for GLO application

# Subrecipient Award Considerations (Generator)



TABLE 2 - BUDGET JUSTIFICATION OF RETAIL COSTS

Project Title/Target Area:								
Activity Description	Act #	Materials/Facilities/Services	\$/Unit	Unit	Quantity	Construction	Acquisition	Total
Water Facilities		Furnish New 75KW Generator	\$38,000.00	EA	1	\$38,000	\$0	\$38,000
Water Facilities	a	Install 75KW Generator and Conc. Pad	\$16,000.00	EA	1	\$16,000	\$0	\$16,000
						<b>\$144,000</b>	<b>\$0</b>	<b>\$144,000</b>

Furnish Generator

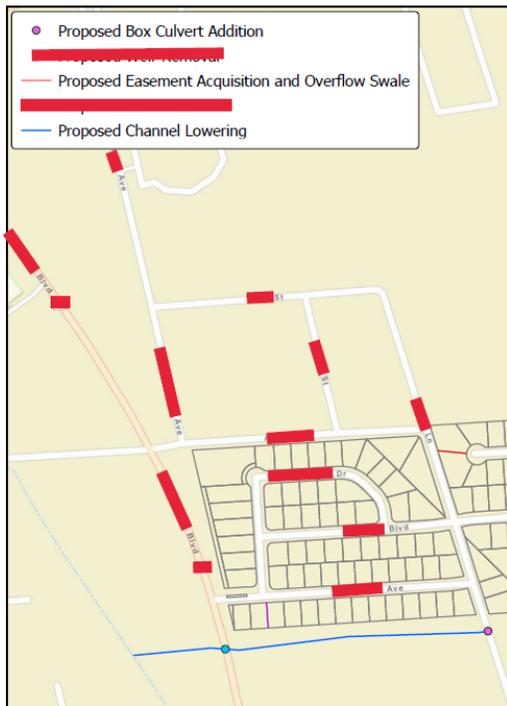
Install

1. Identify and explain the annual projected operation and maintenance costs associated with the proposed activities.
2. Identify and explain any special engineering activities.



Signature of Registered Engineer/Architect Responsible For Budget Justification: \_\_\_\_\_ Date: \_\_\_\_\_ Phone Number: \_\_\_\_\_

# Subrecipient Award Considerations (Drainage)



**TABLE 2 - BUDGET JUSTIFICATION OF RETAIL COSTS**

Project Title/Target Area: [REDACTED]

Activity Description	Act #	Materials/Facilities/Services	\$/Unit	Unit	Quantity	Construction	Acquisition	Total
Flood and Drainage Facilities	5	[REDACTED] Ditch Regrading	\$50.00	LF	8,592	\$429,600	\$0	\$429,600
Flood and Drainage Facilities	5	[REDACTED] Ditch Land Acquisition	\$0.00	LS	1	\$0	\$150,000	\$150,000
Flood and Drainage Facilities	5	[REDACTED] Ditch Culvert	\$150.00	LF	1,000	\$150,000	\$0	\$150,000
						<b>\$1,254,600</b>	<b>\$150,000</b>	<b>\$1,404,600</b>

**Include Acquisition as a Service**

- Identify and explain the annual projected operation and maintenance costs associated with the proposed activities.  
The annual project operation and maintenance cost associated with the drainage is \$1,000.
- Identify and explain any special engineering activities.  
None



Signature of Registered Engineer/Architect Responsible For Budget Justification: [REDACTED]

Date: [REDACTED]

Phone Number: [REDACTED]



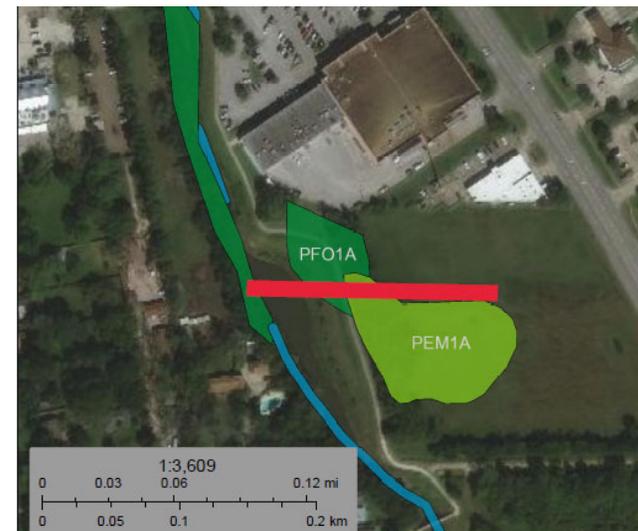
# Preparation Phase

# Pre-Sealed Bid Phase Overall Projects



The amount of effort invested in the pre-sealed bid phase will directly correspond to the fluidity of the procurement activities

- Updated SOPs
- Internal/external capacity
- Adequate, specific and clear scope of work
- Environmental considerations
- Davis Bacon considerations
- Section 3 considerations
- MBE/WBE considerations
- Bid publication
- Bid Book/Plans & Specs



# Pre-Bid Process Responsibilities



- Subrecipient must appoint a Labor Standards Officer (LSO)
  - LSO is responsible for Davis-Bacon wage determination during bid process and compliance during and after construction
  - Complete [Appointment of Labor Standards Officer](#) form
- Engineer creates architectural design drawings that establish project footprint
- Subrecipient begins environmental review
  - See resources and forms on the [HUD Exchange](#)
  - Contact your GLO-CDR Grant Manager and/or GLO-CDR environmental review staff to request technical assistance as needed
  - The [GLO-CDR website](#) also includes environmental review guidance
- GLO must approve environmental review before the project can move forward

# Pre-Sealed Bid Phase Drainage Example



If the project requires acquisition(s) of property, actions must occur:

- Has the environmental been submitted to the GLO and has the subrecipient received the Authority to Use Grant Funds (AUGF)?
- After the AUGF approval, has the subrecipient followed URA requirements, if applicable?



## Notes

- These steps must occur before the drainage project can commence, if acquisition is required
- The end action occurs when the property is in the subrecipient's possession and procurement of construction services may begin

# Pre-Bid Process: Independent Cost Estimate



- After GLO approves environmental review, engineer creates the Final Line Item Scope for the project (later used for the Independent Cost Estimate (ICE))
- Engineer completes 100% of the architectural designs and updates the ICE as needed
- Subrecipient uses the ICE to determine the method of procurement



*The project example SOWs are clearly defined, so the competitive sealed bid method is the best fit, as it focuses exclusively on price for a determined product to be purchased or service to be rendered*

# Pre-Bid Responsibilities Independent Cost Estimate



**Grantees may use multiple sources to develop an ICE, including:**

- Price last paid for similar procurement
- Catalog price, or other advertised offers
- Comparison of previous bid prices for similar services
- Personal experience
- Other historical information
- Detailed analyses
- Ask other communities for information regarding similar bid outcomes



# Best Practice: Bid Alternates



## BID TABULATION (Drainage Project)

Subrecipient Name: \_\_\_\_\_ Project No.: \_\_\_\_\_  
 Project Name: \_\_\_\_\_  
 Location: \_\_\_\_\_  
 Engineer: \_\_\_\_\_  
 Bid Date: \_\_\_\_\_

BID QUANTITIES					Engineer's Estimate		CONTRACTOR A		CONTRACTOR B		CONTRACTOR C	
Ref #	Bid Item #	Item Description	Qty.	UNIT	UNIT AMOUNT	BID	UNIT AMOUNT	BID	UNIT AMOUNT	BID	UNIT AMOUNT	BID
1		Mobilization	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 2,000.00	\$ 1,550.00	\$ 1,550.00
2		8-Inch Sewer Rehabilitation	2800	LF	\$ 60.00	\$ 168,000.00	\$ 55.00	\$ 154,000.00	\$ 60.00	\$ 168,000.00	\$ 60.00	\$ 168,000.00
3		Re-Connect Sewer Service	47	EA	\$ 2,100.00	\$ 98,700.00	\$ 1,900.00	\$ 89,300.00	\$ 2,000.00	\$ 94,000.00	\$ 2,100.00	\$ 98,700.00
4		Pavement Repair	65	SY	\$ 430.00	\$ 27,950.00	\$ 300.00	\$ 19,500.00	\$ 400.00	\$ 26,000.00	\$ 430.00	\$ 27,950.00
5		New Manhole	2	SY	\$ 4,500.00	\$ 9,000.00	\$ 3,000.00	\$ 6,000.00	\$ 4,000.00	\$ 8,000.00		\$ -
<b>TOTAL BASE BID</b>					\$ 306,150.00	\$ 306,150.00	\$ 269,800.00	\$ 269,800.00	\$ 298,000.00	\$ 298,000.00	\$ 296,200.00	\$ 296,200.00
<b>TOTAL BID AMOUNT</b>					\$ 306,150.00	\$ 306,150.00	\$ 269,800.00	\$ 269,800.00	\$ 298,000.00	\$ 298,000.00	\$ 296,200.00	\$ 296,200.00

Engineer: \_\_\_\_\_  
 Bid Date: \_\_\_\_\_

BID ALTERNATIVE					Engineer's Estimate		CONTRACTOR A		CONTRACTOR B		CONTRACTOR C	
Ref #	Bid Item #	Item Description	Qty.	UNIT	UNIT AMOUNT	BID	UNIT AMOUNT	BID	UNIT AMOUNT	BID	UNIT AMOUNT	BID
1		Mobilization	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 500.00	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 2,500.00	\$ 2,500.00
2		8-Inch Sewer Rehabilitation	4200	LF	\$ 60.00	\$ 252,000.00	\$ 55.00	\$ 231,000.00	\$ 62.00	\$ 260,400.00	\$ 60.00	\$ 252,000.00
3		Re-Connect Sewer Service	71	LF	\$ 2,000.00	\$ 142,000.00	\$ 2,000.00	\$ 142,000.00	\$ 2,050.00	\$ 145,550.00	\$ 1,800.00	\$ 127,800.00
4		Pavement Repair	98	EA	\$ 400.00	\$ 39,200.00	\$ 350.00	\$ 34,300.00	\$ 300.00	\$ 29,400.00	\$ 300.00	\$ 29,400.00
5		New Manhole	3	SY	\$ 4,000.00	\$ 12,000.00	\$ 3,100.00	\$ 9,300.00	\$ 4,000.00	\$ 12,000.00		\$ -
<b>TOTAL BASE BID</b>					\$ 447,700.00	\$ 447,700.00	\$ 417,100.00	\$ 417,100.00	\$ 448,350.00	\$ 448,350.00	\$ 411,700.00	\$ 411,700.00
<b>TOTAL BID AMOUNT</b>					\$ 447,700.00	\$ 447,700.00	\$ 417,100.00	\$ 417,100.00	\$ 448,350.00	\$ 448,350.00	\$ 411,700.00	\$ 411,700.00



# Sealed Bid Phase

# Preparing the SBS



## Preparing the ICE

- Prepared by the engineer prior to drafting the SBS for any project
- Used to determine costs are reasonable when evaluating the bids

## Writing the SBS

- Clearly state the scope of work required and the qualifications or licenses required to do the work
- Structure to allow for unit pricing by construction categories (e.g., excavation, linear feet of asphalt, traffic control, etc.)
- Include the applicable Davis Bacon Federal Wage Decision(s)
- Include Section 3 and MBE/WBE requirements, and other federal requirements

# Preparing the SBS (cont.)



Sealed bids have the following requirements:

- Solicited from an adequate number of known suppliers who had sufficient response time prior to the bid opening date
- Publicly advertised (e.g., newspapers, newsletters, subrecipient website, bidders list) to allow respondents enough time to prepare bids
- Includes specifications and attachments and defines the items or services that define a proper bid
- Opened publicly at the time and place prescribed in the SBS
- Firm fixed price contract is awarded in writing to the lowest responsive and responsible bidder
- Any bid may be rejected for sound reason
- Include date, time, and location for the optional pre-bid conference to allow contractors to ask questions

# M/WBE Outreach



Document outreach to small and minority businesses and women's business enterprises (MBWBE) to include the following:

1. Include solicitation lists
2. Ensure they are potential sources of products or services to be bid
3. Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation MBWBE (i.e. provide alternative bidding scenarios)
4. Establish delivery schedules to encourage participation by MBWBE (i.e. timing and flexibility)
5. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency, U.S. Dept. of Commerce
6. Require the Prime Contractor to take affirmative steps as outlined in items one through five above to subcontract with MBWBE, if they award subcontracts

# Public Bid Opening



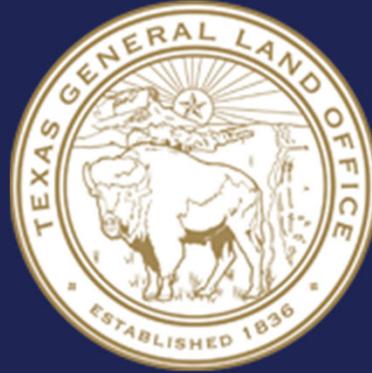
- Open bids publicly at the date, time, and place stated in the SBS
  - Subrecipient contracting officer should:
    - Open the bids
    - Have a sign in sheet
    - Document date, time and place for bid opening
    - Note the name of the bidder and the price offered
  - Record the list of bidders and bid amounts and make it available to the public
-  **COVID-19 Considerations:**
- Subrecipients may need to hold bid openings on a virtual platform (e.g. Zoom, or others)
  - Allowing respondents to submit bids<sub>19</sub> virtually can facilitate social distancing

# Public Bid Opening: Logging Responses



- Ensure that you log all bid responses, including:
  - Vendor/contractor name
  - Bid price
  - Evaluation of responsiveness to solicitation terms
- Ensure that all considered bids were received by the date and time deadline (note: log may include the time bid was received to document compliance)





# Post-Sealed Bid Phase

# Selection and Responsiveness



Respondent must be responsible and responsive:

- Complies with all material terms and conditions of the solicitation and all material requirements of the specifications and was submitted in form specified in the solicitation
- Non-responsive bids do not comply with the solicitation and are not eligible to be considered
- Contractor should not have any liens, be debarred or otherwise excluded from completing the work

Additional factors:

- Submission of bids or proposals by the time, date, and place specified in the solicitation
- Submission of bid, performance or payment security (bond), if required by the solicitation
- Submission of samples, literature, or other information, if required by the solicitation
- Submission of all required disclosure statement
- Attendance at mandatory (if made mandatory) pre-bid conference or site visit/inspection

# Bid Tabulation Generator Example



**BID TABULATION (Generator Project)**

Subrecipient Name: \_\_\_\_\_ Project No.: \_\_\_\_\_  
 Project Name: \_\_\_\_\_  
 Location: \_\_\_\_\_  
 Engineer: \_\_\_\_\_  
 Bid Date: \_\_\_\_\_

BID QUANTITIES					Engineer's Estimate		CONTRACTOR A		CONTRACTOR B		CONTRACTOR C	
Ref #	Bid Item #	Item Description	Qty.	UNIT T	UNIT AMOUNT	BID	UNIT AMOUNT	BID	UNIT AMOUNT	BID	UNIT AMOUNT	BID
1	1a	Furnish New 75KW Generator	1	EA	\$ 38,000.00	\$ 38,000.00	\$ 37,500.00	\$ 37,500.00	\$ 36,000.00	\$ 36,000.00	\$ 36,000.00	\$ 36,000.00
2	1a	Install 75KW Generator w/ Concrete Pad	1	EA	\$ 16,000.00	\$ 16,000.00	\$ 16,250.00	\$ 16,250.00	\$ 15,000.00	\$ 15,000.00		\$ -
<b>TOTAL BASE BID</b>					\$	54,000.00	\$	53,750.00	\$	51,000.00	\$	36,000.00
<b>TOTAL BID AMOUNT</b>					\$	54,000.00	\$	53,750.00	\$	51,000.00	\$	36,000.00

# Bid Tabulation Drainage Example



## BID TABULATION (Drainage Project)

Subrecipient Name:

Project No.:

Project Name:

Location:

Engineer:

Bid Date:

BID QUANTITIES					Engineer's Estimate		CONTRACTOR A		CONTRACTOR B		CONTRACTOR C	
Ref #	Bid Item #	Item Description	Qty.	UNIT	UNIT AMOUNT	BID	UNIT AMOUNT	BID	UNIT AMOUNT	BID	UNIT AMOUNT	BID
1		Mobilization	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 3,500.00	\$ 3,500.00	\$2,500.00	\$ 2,500.00	\$3,000.00	\$ 3,000.00
2		21" X 15' CMP Culvert	1000	LF	\$ 46.31	\$ 46,310.00	\$ 50.00	\$ 50,000.00		\$ -	\$ 51.00	\$ 51,000.00
3		Ditch Regrading	8592	LF	\$ 50.00	\$ 429,600.00	\$ 45.00	\$ 386,640.00	\$ 50.00	\$ 429,600.00	\$ 50.00	\$ 429,600.00
4		Rock Bags	2	EA	\$ 11.00	\$ 22.00	\$ 9.00	\$ 18.00	\$ 10.00	\$ 20.00	\$ 13.00	\$ 26.00
5		Restoration- SOD-TOP Soil	1000	SY	\$ 14.00	\$ 14,000.00	\$ 14.00	\$ 14,000.00	\$ 12.00	\$ 12,000.00	\$ 12.00	\$ 12,000.00
<b>TOTAL BASE BID</b>					\$	492,932.00	\$	454,158.00	\$	444,120.00	\$	495,626.00
<b>TOTAL BID AMOUNT</b>					\$	492,932.00	\$	454,158.00	\$	444,120.00	\$	495,626.00

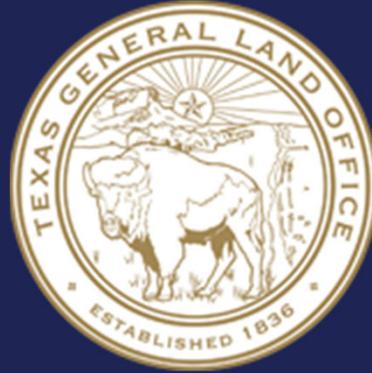
# Price Analysis



Price Analysis: determining whether the asking price for a product or service is fair and reasonable without examining the vendor's specific cost and profit calculations. This process determines whether prices are fair and reasonable.

Sample techniques:

- Analysis of previous prices paid for the same service
- Comparing proposed prices received in response to a solicitation
- Comparison of contractor's price with the in-house ICE
- Comparison of quotations or published price lists from multiple vendors
- Comparisons with GSA prices



# Contract Award Phase and Construction

# Contract Execution



- Subrecipients using the sealed bid method use a firm fixed-price contract:
  - Requires the delivery of products or services at a specified price, fixed at the time of the contract award and not subject to any adjustment based on the contractor's experiences in performing the contract
  - Appropriate for cases where fair and reasonable prices can be established at the time of award
  - Places maximum risk and full responsibility for all costs and resulting profit or loss on the contractor
- Give the contractor time to prepare performance and payment bonds before executing the contract
- Finalize the contract document with Spec Book, required riders and attachments, liquidated damages language, insurance certificates, and necessary contract clauses and provisions

# Contract Provisions



All contracts executed between the subrecipient and a contractor must include the following CDBG-DR and/or CDBG-MIT program requirements:

- Performance requirements and penalties
- Project schedule including the performance period and completion date
- All Section 3 covered contracts shall include the Section 3 clause 22
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act 23
- May **not** contain cost plus or incentive savings provisions and may **not** reference compensation adjustments for cost plus or incentive savings provisions

# Contract Execution & Construction



- Contractor must submit the [Financial Interest Report](#) to GLO-CDR within 30 days of executing a prime contract (subcontractors must submit before the final draw)
- Verify there is no conflict of interest
- Compliance with contract provisions
- Hold a pre-construction meeting
- Issue Notice to Proceed
- Complete [Request for Additional Classifications and Rates](#) (if additional Davis-Bacon classifications are needed)
- LSO must submit the [Labor Standards Record](#) to the GM for all contractors and subcontractors

# Change Orders



- Reflect any changes to existing contracts in a change order that becomes part of the original contract
- Types of permitted changes:
  - Specification changes to account for design errors or omissions
  - Changes in contract amount due to authorized additional or omitted work (requires appropriate price and cost analysis to determine cost reasonableness)
  - Extensions of a contract term for good and sufficient cause
  - Changes in delivery location
  - Changes in shipment method
- Changes are **not** permitted for material alterations to the SOW or for the insertion of a renewal clause to the contract (may only be made via a new procurement)

# Change Order



Per GLO's Implementation Manual, a change order must meet the following:

- Sufficient grant or local funds are available to meet any increased costs
- Original contract price has not increased by more than 25% or decreased (without contractor consent) by more than 25% (municipalities) or 18% (counties)
- All items listed were competitively procured through the original bid
- All items listed are eligible and comply with the subrecipient agreement, including the performance statement, implementation schedule, budget, and environmental review requirements
- **Federal requirements require a cost price analysis for amendments (change orders)**

# Contract Revisions



- Changes must be categorized by type and numbered sequentially
- Maintain a log of all executed change orders for each procurement that includes:
  - Name of the vendor and the original contract amount
  - Reason(s) for and the dollar amount of the change order
  - Running total of the value of the changes and the revised contract amount
- As-built field records shall be maintained by the subrecipient or its designated construction site representative
  - Revised set of drawings submitted by a contractor upon completion of a construction project
  - Show the dimensions, geometry, and location of all components of the project

# Common Pitfalls



- Poor planning and preparation
- Lack of documentation
- Lack of “separation of duties”
- Not engaging in ICEs
- Incomplete reasonableness test on contract modifications
- Misunderstandings of “conflict of interest”, specifically the appearance section
- Failure to perform cost and price analysis on contract modifications or change orders
- Inclusion of non-competitive practices/requirements in procurement documents
- Failure to have an adequate contract administration system to track the history of each procurement action



# Common Findings or Concerns



- Prohibited use of cost-plus percentage of cost contracting (subrecipients should be entering into fixed-price contracts for competitive sealed bid procurements)
- Failure to prepare ICE prior to receiving and opening bids
- Failure to perform cost and price analysis on contract modifications or change orders
- Inclusion of non-competitive practices/requirements in procurement documents (e.g., geographic preference, minimal public advertisement, excessive bonding requirements, etc.)
- Failure to have an adequate contract administration system to track the history of each procurement action

# Relevant Resources



- [2 CFR 200](#) (Part 318-326 starts on page 117)
- HUD Exchange: [Buying Right Guide](#)
- HUD.gov: [Quick Guide to Cost and Price Analysis](#)
- [GLO Website \(Procurement Section\)](#)
- [GLO Procurement Checklist](#)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Office of Community Planning and Development  
Community Development Block Grant Program

---

## BUYING RIGHT

CDBG-DR and Procurement: A Guide to Recovery

---

September, 2017





# Questions & Answers Session

# Training Survey



[Sealed Bid Presentation Survey](#)