



The Texas General Land Office Community Development and Revitalization Program (GLO-CDR)

Procurement Guidance March 2019

“We work to rebuild communities, to put Texans back in their homes, and to help businesses recover after the trauma of disaster.”

George P. Bush
Texas General Land Office Commissioner



Introduction

- Purpose: Provide an overview of the federal procurement requirements to subrecipients of Community Development Block Grant Disaster Recovery (CDBG-DR) funds.
- Following 2 CFR 200:
 - Reasonably ensures the allowability of eligible program expenses.
 - Allows for fair and open competition.

Any funds provided by the U.S. Department of Housing and Urban Development are subject to 2 CFR 200 procurement requirements.



Federal Requirements

- **2 CFR 200 applies to subrecipients receiving 2015 and 2016 flood allocations and Harvey Funding. Effective for all procurements made after September 1, 2017.**





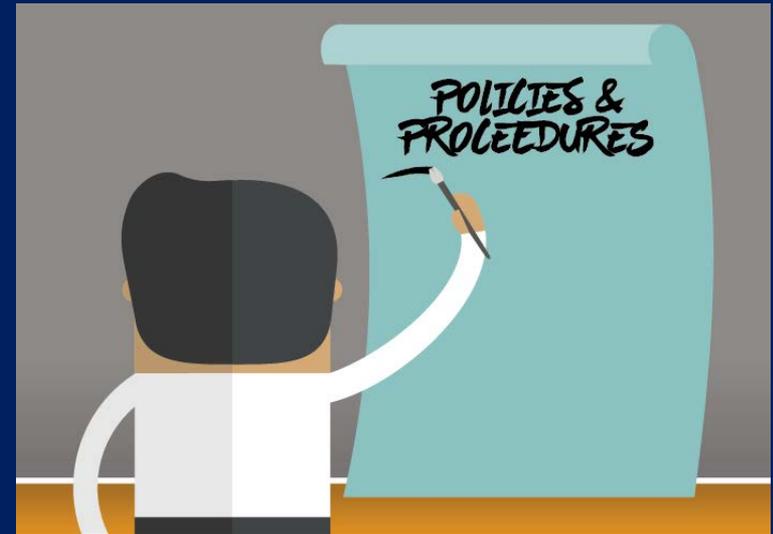
Procurement Policies and Procedures

- 24 CFR 570.489 (g) directs GLO-CDR to establish requirements for policies and procedures as they relate to CDBG-DR for units of general local government based on full and open competition
- GLO-CDR requires subrecipients to **update their procurement policies and procedures to** reflect the procurement and contract requirements of 2 CFR 200.318 – 200.326 before engaging in any procurement activities.
- NOTE- If there is a conflict between federal, state, and local laws and regulations regarding procurement, the more stringent law or regulation will apply.



Procurement Policies and Procedures

- **Key Elements Include:**
 - Applicable state, local, and tribal laws and regulations- 200.318 (a).
 - Written standards of conduct addressing conflicts of interest- 200.318 (c)(1).
 - Avoidance of the purchase of unnecessary or duplicative items- 200.318 (d) .
 - 200.319 (c)- Procedures must ensure all solicitations:
 - Incorporate a clear and accurate description of the technical requirements for the material, product or service that does not restrict competition;
 - Identify all requirements which the offerors must fulfill and all other factors used in evaluating the bids or proposals.





Procurement Methods

COMPETITION

- Subrecipients must carry out procurements in an open, fair, uniform and thorough manner.





Procurement Methods

- Micro-Purchases
- Small Purchases
- Sealed Bids
- Competitive Proposals (RFP/RFQ)
- Non-Competitive Proposal (Sole Source)





Procurement Methods

Micro-Purchase – The purchase of supplies or services that are less than or equal to **\$3,500**.

- Grant recipient must, to the extent practicable, distribute these purchases equitably among qualified suppliers.
- \$2,000 threshold for construction
- No formal solicitation required.
- Cost Reasonableness

Small Purchase – The acquisition of supplies or services greater than **\$3,500** and less than or equal to **\$150,000**.

- No formal solicitation required, but price or rate quotations must be requested from at least three (3) qualified sources.
- Cost Reasonableness





Procurement Methods

- **Sealed Bids** — Purchases greater than **\$150,000**.
 - Preferred method for construction contracts where the lowest bid price is selected.
 - Requires bid bond (5% of bid price), and performance bond and payment bond for 100% of the contract price.
 - Firm Fixed Price Contracts
 - Cost/Price Analysis
 - Public Bid Opening must document Date, Time, and Location.





Procurement Methods

Competitive Proposals – Purchases where conditions for sealed bid are not appropriate.

- **Request for Proposal (RFP)**
 - Qualifications and Price are used in evaluating proposals.
 - Preferred method for administrative services.
 - Cost/price Analysis
 - Bid, Performance, and Payment Bond.
 - Public Bid Opening must document Date, Time, and Location.
- **Request for Qualifications (RFQ)**
 - Qualifications are used in evaluating proposals.
 - Most qualified is selected, subject to negotiation of fair and reasonable compensation.
 - Used in procurement of Architectural & Engineering (A/E) professional services.
 - Cost/price Analysis
 - Bid, Performance, and Payment Bond.
 - Public Bid Opening must document Date, Time, and Location.





Procurement Methods

- **Noncompetitive Proposals** – Procurement through solicitation of a proposal from only one source (sole source).
 - Noncompetitive/sole source procurement requires that the subrecipient **receives prior approval from GLO-CDR.**
 - This may be used only under special circumstances which are applicable for all purchase levels.





Prohibitive Practices

Prohibited Contract Types:

- 2 CFR 200.323- Cost Plus a Percentage of Cost Pricing
- 2 CFR 200.318 (j)(1)- Time and Material Type Contracts. Not allowed unless the following factors are met:
 - No other contract is suitable
 - Contract includes a ceiling price that the contractor exceeds at its own risk

Prohibited Practices that Restrict Full and Open Competition:

- Placing unreasonable requirements on firms in order for them to qualify
- Requiring unnecessary experience and excessive bonding
- Non-competitive contract to consultants that are on retainer contracts
- Organizational conflicts of interest
- Specifying a “brand name” product
- Any arbitrary action in the procurement process
- Geographical preference in the solicitation



Required Procurement Documentation

- 2 CFR 200.318 (i)- Subrecipients must maintain records sufficient to detail the history of the procurement. Including but not limited to:
 - Rationale for procurement method
 - Selection of contract type
 - Contractor selection/rejections
 - Basis for contract price
- Failure to maintain proper documentation may result in disallowed costs.





Required Procurement Documentation

- **Record Retention:**
 - 2 CFR 200.333-.337
 - 3 Years after state closes the grant with HUD, unless extended by the Federal Register (See reference slide or contact your grant manager for more info)
- **The Following Must be Retained in the Procurement File:**
 - GLO-CDR Procurement Checklist
 - Bid packet/solicitation (Sealed Bid, RFP, RFQ)
 - Submitted bids/bid rejections (Sealed Bid, RFP, RFQ)
 - Bid advertisements (Sealed Bid, RFP, RFQ)
 - Bid tabulations/score sheets (Sealed Bid, RFP, RFQ)
 - Documentation of bid opening meeting (time, date, and location) (Sealed Bid, RFP, RFQ)
 - Debarment Check
 - Documentation of Affirmative Action Steps Taken (MBE/WBE/labor surplus firms)
 - Cost/Price Analysis
 - Grantee approval of selected contractor/winning bid
 - Executed contracts
 - Conflict of interest disclosures (if applicable)



Common Procurement Issues

- Lack of procurement policies and procedures that incorporate 2 CFR 200 requirements.
- Ensuring that cost or price analyses are performed and documented (Applies also to amendments/change orders)
- Ensuring contracts include all applicable contract provisions.
- 2 CFR 200.321 (b)- Ensuring steps are taken to contract with small and minority, women-owned businesses.
- Inadequate debarment check
 - <https://www.sam.gov>
 - To be performed before awarding a contract





Common Procurement Issues (cont.)

- Selecting the appropriate procurement method.
- Maintaining sufficient records
- Ensuring procurements provide full and open competition in accordance with 2 CFR 200.319, specifically:
 - Prohibition of geographical preferences
 - Keeping prequalified lists current
 - Identifying all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.





GLO-CDR Procurement Checklist

sample

| PROCEDURES STANDARDS AND GUIDANCE (Section 1) | | | | | |
|---|--|-----|----|-----|-------|
| §200.318 General procurement standards | | | | | |
| | | Yes | No | N/A | Notes |
| 1.1 | Does the subrecipient maintain documented policies and procedures that reflect applicable state, local, and tribal laws and regulations and provide that they conform to applicable federal law and the standards identified in this part? § 200.318(a) | | | | |
| 1.2 | Does the subrecipient maintain contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders? § 200.318(b) | | | | |
| 1.3 | Does the subrecipient maintain a written standard of conduct addressing conflict of interest, both direct and indirect, and governing the actions of employees engaged in the selection, award, and administration of contracts to ensure conflicts of interest are identified, substantiate nominal financial interests or value, and disciplinary actions for violations of the standards? § 200.318(c)(1) | | | | |
| 1.4 | Did the subrecipient avoid acquisition of unnecessary or duplicative items? Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. § 200.318(d) | | | | |
| 1.5 | Is the contract being awarded to a responsible contractor possessing the ability to perform successfully under the terms and conditions of the proposed procurement, giving consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources? § 200.318(h) | | | | |
| 1.6 | Did the subrecipient determine no other contract other than time and materials type contract is suitable and include a price ceiling that if exceeded, the contractor exceeds at their own risk? A time and material's contract is defined as the sum of (i) the actual cost of materials and (ii) direct labor hours charged at fixed hourly rates that reflect wages, general administrative expenses, and profit. § 200.318(j)(1) | | | | |
| 1.7 | Does the subrecipient have a higher degree of oversight being asserted for time and material contracts to obtain reasonable assurance that the contractor is maintaining efficient methods and effective cost controls related to price ceiling related risks? § 200.318(j)(2) | | | | |
| 1.8 | Did the subrecipient responsibly resolve any related protests, disputes, or claims arising out of procurements? § 200.318(i) | | | | |



Resources

- **GLO-CDR Procurement Checklist:**
 - [http://recovery.texas.gov/files/resources/contract-procurement/procurement-checklist.pdf#search=procurement checklist](http://recovery.texas.gov/files/resources/contract-procurement/procurement-checklist.pdf#search=procurement%20checklist)
- **Texas Rebuilds- Procurement & Contracting**
 - <http://recovery.texas.gov/local-government/resources/procurement-contracting/index.html>
- **Office of Management and Budget (OMB) Presentation on New Guidance:**
 - <https://www.youtube.com/watch?v=6O9cqR4g9No&feature=youtu.be&list=PLDYbj6cykYZ-rcnHRujd5LBbD9Nx0LbeE> (Video)





Resources

- 2 CFR 200.318-326:
 - <https://www.govinfo.gov/app/details/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318/context>
- 2 CFR Part 200 Overview for Grantees:
 - <https://portal.hud.gov/hudportal/documents/huddoc?id=cfr200.pdf> (PDF)
- HUD 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/>





Thank you for attending!

Questions?