



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

Procurement 101



Agenda

- Application of Federal Requirements
- Procurement Basics & Standards
- Cost & Price Analysis
- Methods of Distribution
- Common Issues
- Questions?

Presenter

Steve Higginbotham, ICF



Icons



Future Training



Applied to
GLO-CDR



Applied to
Subrecipients



Applied to
Federal

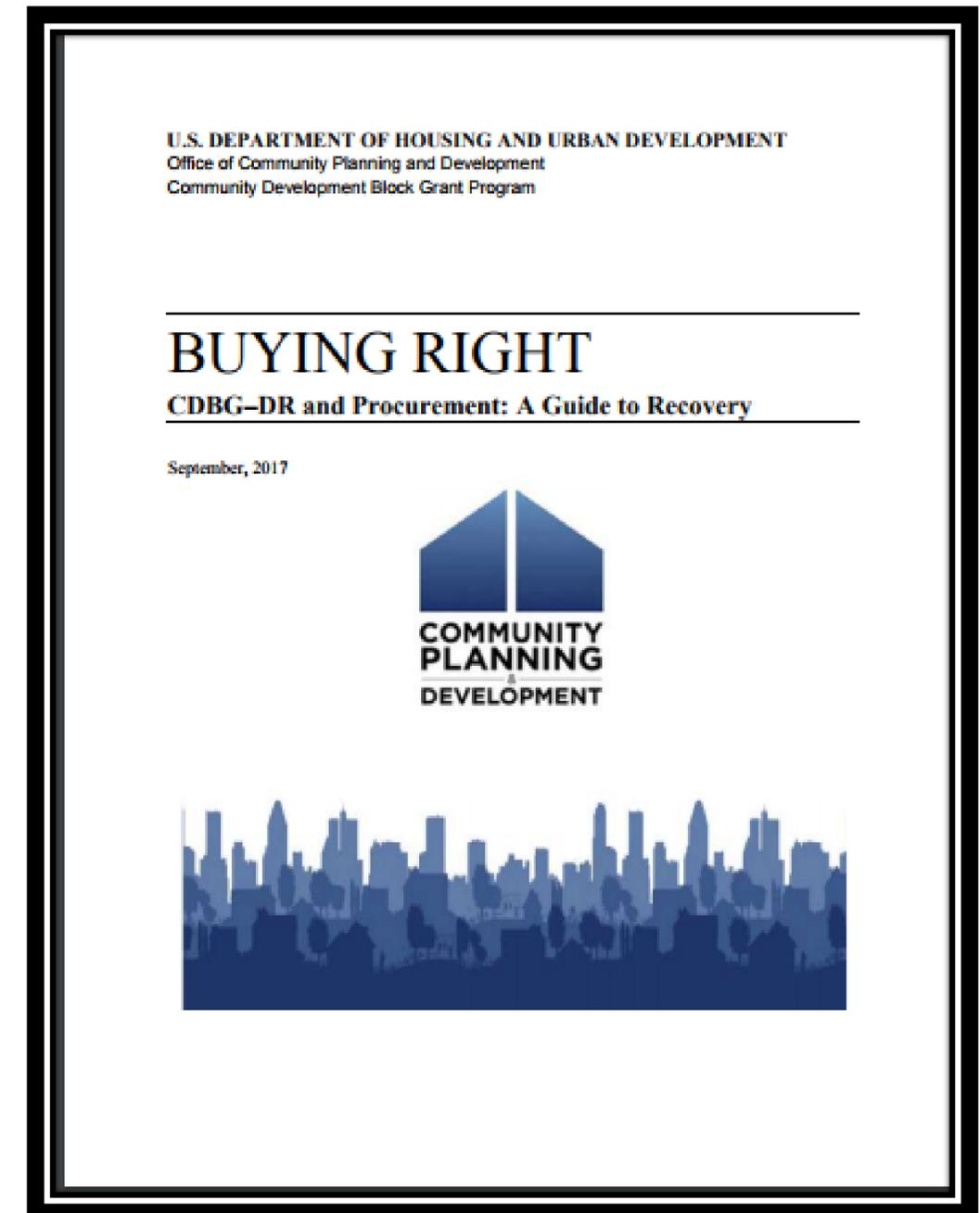
Key Resources



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/>



Key Resources



DIGITAL RESOURCE MANUAL: PROCUREMENT 101

2 CFR 200.317 PROCUREMENT BY STATES

In the HUD-published [Buying Right](#) manual, the appendix provides the specific language from the regulation, an “interpretation” or simple language version, and some important items to keep in mind. Of note, the Appendix begins with 2 CFR 200.317 Procurement by States. In fact, however, 24 CFR Part 570.489(g) takes precedence over Part 200. The regulation in 24 CFR 570.489(g) is found immediately below in the “Keep in Mind” section for 2 CFR 200.317.



Key Point

CDBG disaster recovery funds are subject to the State CDBG regulations unless HUD provides a waiver or alternative requirement by Federal Register Notice. The State CDBG regulations on procurement found at 24 CFR Part 570.489(g).

Analysis: 2 CFR 200.317

Previous Regulations/Circulars

- See 85.36(a). Program Administrative [Reqs](#) for States 24 CFR 570.489 is still required.

What it Means?

- A State will follow its own established policies and procedures, which may not be exactly the same as the Federal regulations.
- All other public jurisdictions, such as Counties and Municipalities, must follow procurement standards—unless the State specifically requires them to follow procurement guidelines.

Keep in Mind

- When it comes to procurement with CDBG funds, States are subject to different than Counties and Municipalities.
- States should have written policies. Below is the citation from 24 CFR 489(g) *When procuring property or services to be paid for in whole or in part with CDBG funds shall follow its procurement policies and procedures. The State shall establish required procurement policies and procedures for units of general local government, based on open competition. Methods of procurement (e.g., small purchase, sealed*

CDBG-DR

PROCUREMENT 101 BRIEF

CDBG-DR grantees and [subrecipients](#) procuring goods and services with their grant funds must ensure that they are following all program procurement statutory and regulatory requirements. The urgency in post-disaster recoveries often leads state and local officials to work to quickly restore infrastructure, public services, and help private companies and citizens make repairs. However, grantees and [subrecipients](#) that do not follow all CDBG program requirements may be forced to repay Federal funds. The rules are different for states receiving CDBG-DR funds directly from HUD, compared with those for local governments; however, the overarching principals of ensuring full and open competition remain the same.

Guiding Principles

1. Ensure fair and open competition.
2. Adhere to the current regulations and related advisories.
3. Comply with the most stringent procurement standards, be it local or state.
4. Include standards of conduct for employees.
5. Prohibit conflicts of interest.
6. Understand any additional requirements established through the CDBG-DR appropriations act or accompanying Federal Register Notice.

Tips for an Effective Procurement Policy

The first step in managing the procurement process is developing and implementing a Procurement Policy. A Procurement Policy must meet federal guidelines, but also reflect state policy as well, where they exceed federal minimum requirements. The essence of all grantees can be summarized as follows:



Application of Federal Regulations

States may comply with these financial requirements in one of three ways:

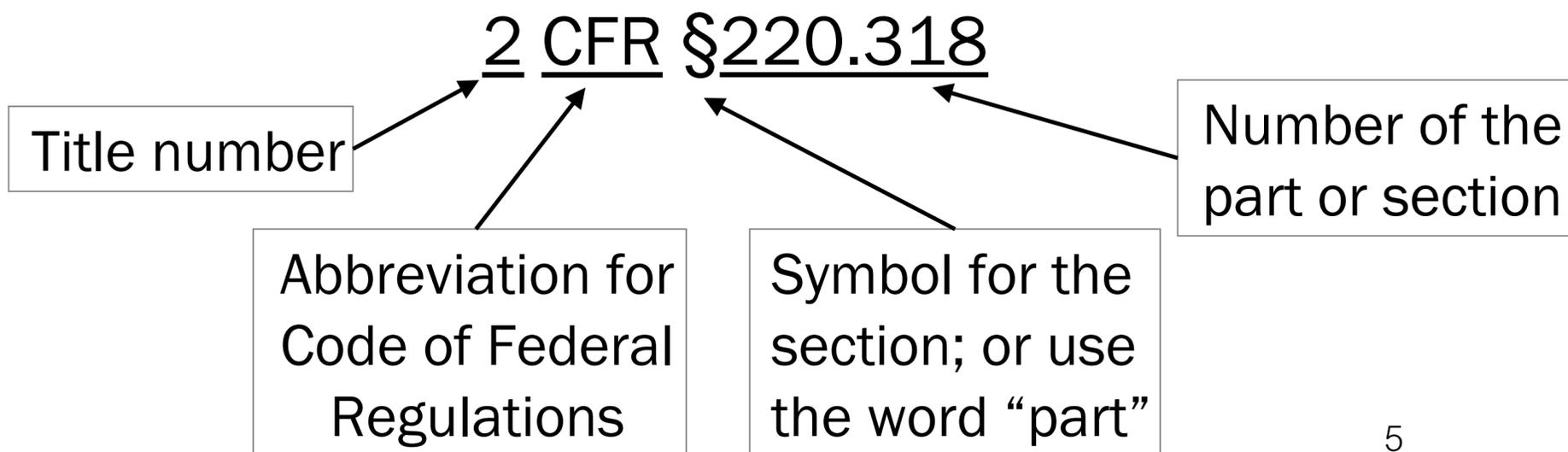
- The State may use its own fiscal and administrative procedures.
- The State may use its own fiscal and administrative procedures (24 CFR 570.489(g)).
- Apply the State's procurement policies and procedures (24 CFR 570.489(g)).

Understanding Citations



CFR	Code of Federal Regulations	www.gpo.gov
FR	Federal Register	www.federalregister.gov

Citations to the Code of Federal Regulations in the Federal Register are cited in the following manner:



Code of Federal Regulations

Title 2 - Grants and Agreements

Volume: 1
 Date: 2014-01-01
 Original Date: 2014-01-01
 Title: Section Å§ 200.318 - General procurement standards.
 Context: Title 2 - Grants and Agreements. Subtitle A - Office of Management and Budget Guidance for Grants and Agreements. CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE. - Reserved. PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS. Subpart D - Post Federal Award Requirements. - Procurement Standards.

§ 200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award.

Application of Federal Regulations



Applicable Procurement Regulations for States

- 24 CFR 570.489(g)
- 2 CFR 200.317
- 2 CFR 200.318-326

Applicable Procurement Regulations for Subrecipients

- 24 CFR 570.489(g)
- 2 CFR 200.318-326

Application of Federal Regulations



When GLO-CDR and subrecipient requirements exceed the minimum provisions for CDBG-DR procurement, the entity should comply with the more stringent state or local procurement standards.



For the State, GLO-CDR is demonstrating compliance with this requirement by following existing State procurement requirements as allowed per **2 CFR 200.317**



For the State's subrecipients, GLO-CDR is requiring each to apply procurement requirements described in **2 CFR 200.318-200.326**

Application of Federal Regulations



Additional Requirements



- Appropriation Specific: Important to review applicable Federal Register Notices
- Conflict of Interest **24 CFR 570.489(h)**

Procurement Basics



Lifecycle

Pre-Procurement

- Policies
- Procedures

Active Procurement

- Competitive Requirements
- Non-Competitive Requirements

Post-Procurement

- Contracting Requirements

Procurement Basics



Fundamental Basics

- Full and open competition
- Uses of funds must respond to need
- Price and cost analysis
- Written system of contract administration
- List of prequalified contractors/vendors



Procurement Standards



Standards to be specified by states

24 CFR 570.489(g)



Method of procurement



Standards of conduct*



Purchase orders and contracts



Subrecipient and contractor determinations

*Other conflicts of interest are covered by § 570.489 (h)

Procurement Standards



Prohibitive Practices



- **Contract Types**

- Prohibition on Cost Plus a Percentage of Cost (CPPC) Pricing

2 CFR 200.323

- Time and Material (T&M) type contracts **2 CFR 200.318(j)(1)**

Federal procurement requirements do allow for T&M type contracts, but only after a defensible and properly documented determination has been made that:

- No other contract is suitable
- The contract includes a ceiling price that the contractor exceeds at its own risk

Procurement Standards



Prohibitive Practices (continued)



- **Prohibition on Practices that Restrict Full and Open Competition**

2 CFR 200.319

Examples of situations considered restrictive of competition:

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

Test Your Knowledge



True or False

A state may not follow its own state laws and regulations regarding procurement, but rather must follow federal procurement standards.



False

A state may adopt **2 CFR Part 200**, in part or in whole, or follow their own state laws and regulations. A state must document which option they are choosing in their procurement policies and procedures.

- GLO-CDR has chosen to follow its own state laws and regulations
- GLO-CDR is requiring its subrecipients to follow **2 CFR 200.318-326**

Test Your Knowledge



True or False

A state may choose any contract vehicle as long as it is documented in their procurement policies and procedures.



False

There are two types of contracts prohibited under procurement rules:

- Cost plus a percentage of cost
- Percentage of construction costs methods of contracting

Best Practices: General



- Identify and clearly specify standards
- Seek competitive offers
- Use a written agreement
- Ensure the fair and equitable treatment
- Keep good records
- Have a quality assurance system
- Adopt a procurement policies and procedures manual

Contract Administration



- Follow a full and open competitive process in securing products and services
- Properly document purchasing activities and decisions
- Observe the special rules for particular kinds of purchases
- Exclude contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or RFP (Requests for Proposals) from participating in such procurements **2 CFR 200.319(a)**

Debarment

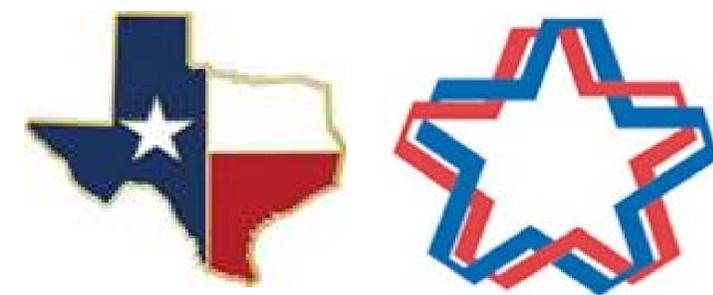


Grantees must not make any award to any contractor or organization which is debarred or suspended or is otherwise excluded from participation in Federal assistance programs.

2 CFR Parts 180 and 2424

Applies to CDBG-assisted contracts at any tier in the process

- All contractors
- All subrecipients
- All units of local government



Debarment



Check the federal SAM database (<https://www.sam.gov>)

- Contracting firm
- Name of the president and owner of the firm



Document your findings.

- Website printouts should be placed in the file to document compliance.



Appropriation Requirements



Important to review the applicable Federal Register Notice for any appropriation-specific procurement requirements.

The screenshot shows the Texas Smart Buy website interface. At the top left is the "TEXAS SMART BUY" logo. On the top right, there is a "Sign In" button and a shopping cart icon with "0 items". Below the header is a navigation bar with "Contracts", "SPD Applications", and "Help" links. The main heading is "Statewide Procurement Division (SPD) Statewide Contracts". There are two tabs: "Search Contracts" and "Browse Contracts". Below the tabs are several search filters: "Contract Number", "Contractor/Dealer", "Source Contract Number", "Contract Category" (a dropdown menu with "- Select Contract Category -"), "GSA Schedule" (a dropdown menu with "- Select GSA Schedule -"), "NIGP Code", "Keyword", and "VID". At the bottom of the search area are three buttons: "Search", "Clear Filters", and "Export Results".

Examples:

- Public website
 - Procurement policies
 - Status of procurements
 - Copy of solicitation
 - Copy of executed contract
- Posting of executed contracts for public review

Additional Requirements



- Required Contract Provisions
2 CFR 200.326
- Contracting with small and minority businesses, women's business enterprises **2 CFR 200.321**
- Section 3 **24 CFR Part 135**
- Davis-Bacon and Related Acts



Cost and Price Analysis



GLO-CDR and subrecipients must perform a price or cost analysis in connection with every procurement action above the simplified acquisition threshold, including contract modifications.



- Independent estimates made before receiving bids or proposals
- Negotiate profit as a separate element of the price
- Independent analysis can be done by staff, 3rd party consultants, or examination of existing price lists and product catalogs

Types of Procurement



5 Methods of Procurement

Micro Purchases

Small Purchases

Sealed Bid

Competitive Proposals

Non-Competitive Proposals
(Sole Source)

Special Circumstances

Cost Reimbursements
Contracts

Architecture and
Engineering Contracts

Construction Contracts

Methods of Procurement



Procurement Type	Cost Methodology Reasonableness	Solicitation Method	Applications	Dollar Thresholds if applicable
Micro-Purchases 2 CFR 200.320(a)	Price Analysis	No solicitation required	Supplies Produced items Single-task service	Under \$2,000 for construction Under \$3,500 for all other purchases
Small Purchase 2 CFR 200.320(b)	Price Analysis	Quotations Submitted Bids	Produced Items Single-task Service Supplies	\$150,000 or less for produced items \$150,000 or less for non-construction services

Methods of Procurement



Procurement Type	Cost Methodology Reasonableness	Solicitation Method	Applications	Dollar Thresholds if applicable
Sealed Bid Formal Advertising 2 CFR 200.320(c)	Price Analysis Cost Analysis	Submitted Bids	Construction Items Produced or Designed Items	All construction contracts including less than \$150,000 Produced or designed items over \$150,000
Competitive Proposals 2 CFR 200.320(d)	Price Analysis Cost Analysis	Submitted Bids	Professional Services Multi-task Services Designed Items	Professional Services and/or Multi-task Services over \$150,000 Designed items over \$150,000 when Sealed Bid is not appropriate

Methods of Procurement



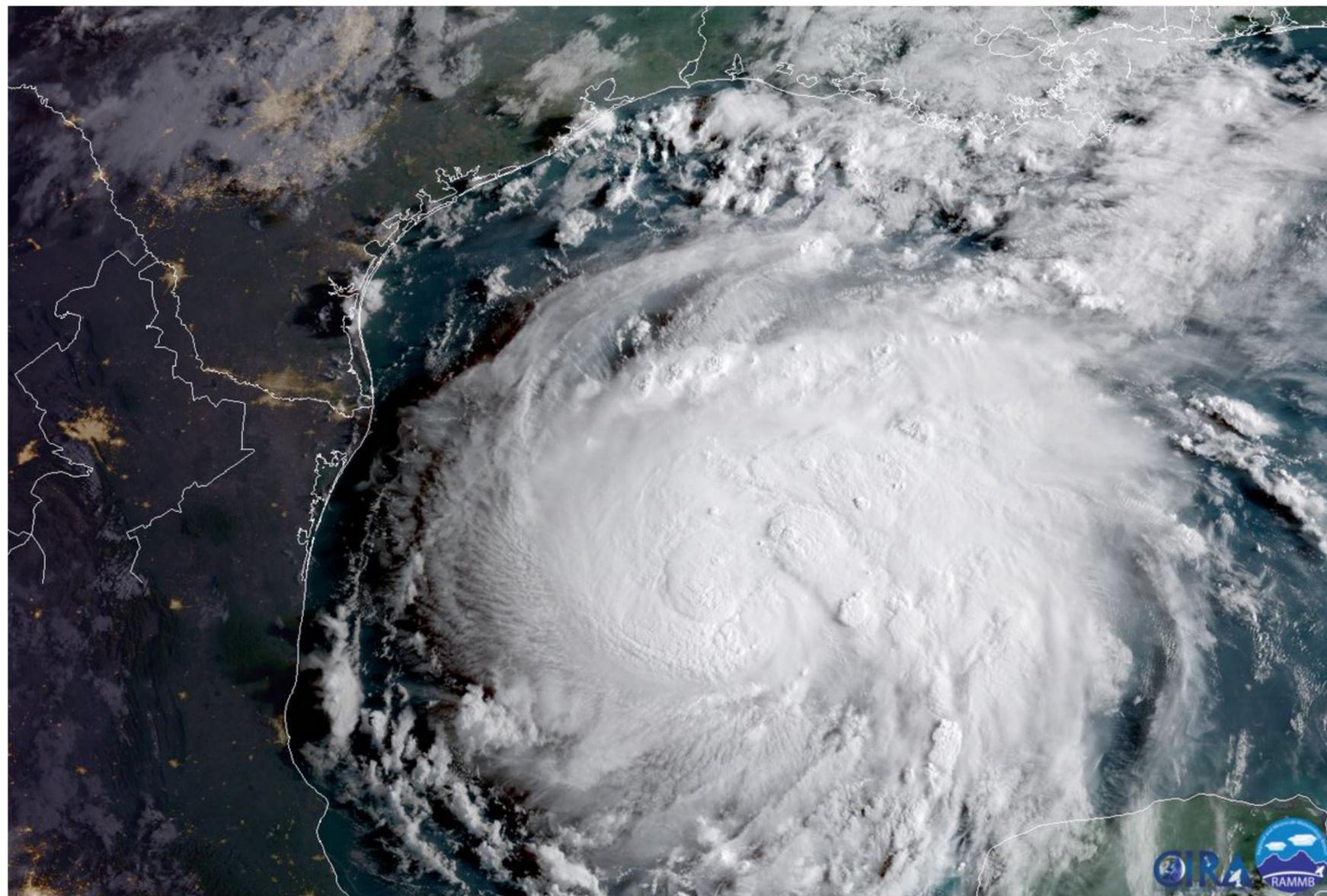
Procurement Type	Cost Methodology Reasonableness	Solicitation Method	Applications	Dollar Thresholds if applicable
Non-Competitive Proposals 2 CFR 200.320(f)	Cost Analysis	Submitted Proposals	Produced Items Single-task Services Professional Services Multi-task Services Designed Items	No particular threshold, but may only be used when other methods are not feasible

Common Pitfalls



- Poor record keeping
- Lack of ‘separation of duties’
- Not engaging in independent cost estimates
- Incomplete reasonableness test on contract modifications
- Misunderstandings of ‘conflict of interest,’ specifically the appearance section

Questions?



Survey



<https://www.surveymonkey.com/r/GLOProcurement101>