

TEXAS GENERAL LAND OFFICE



COMMUNITY DEVELOPMENT & REVITALIZATION PROCUREMENT GUIDANCE FOR SUBRECIPIENTS UNDER 2 CFR PART 200 (UNIFORM RULES)

The Texas General Land Office Community Development & Revitalization (GLO-CDR) is the state agency designated by the Governor and responsible to the U.S. Department of Housing and Urban Development (HUD) for the grant administration of this funding, herein referred to as the “grantee”. Eligible applicants (city and county governments) located within, or performing activities within the Texas counties as declared in DR-4223 and/or DR-4245, are herein referred to as “subrecipient” and are the desired audience of the guidance.

This guidance is designed to help make better use of your Community Development Block Grant Disaster Recovery (CDBG-DR) resources and to avoid common procurement pitfalls in managing your grant.

The procurement checklist will assist subrecipients of CDBG-DR funds provided by HUD to comply with the federal procurement requirements and reasonably ensure the allowability of eligible program expenses.

This checklist is intended to provide general guidance only and does NOT provide a detailed explanation of the federal procurement requirements – it is not intended to serve as legal advice and GLO-CDR makes no guarantee that adherence to this checklist will result in full reimbursement of eligible expenses.

To understand the requirements fully, the user should review the provisions of 2 CFR § 200.318 – 326 and Appendix II to Part 200, which are the source of these requirements.

Contact your servicing attorney or legal counsel with any questions on the application of these standards. Our guidance is limited to the content within 2 CFR § 200.318 – 326 and Appendix II to Part 200.

Grant Administrator and Engineer Procurement

GLO-CDR will allow a subrecipient to use a single vendor to both assist in the preparation of an application and to perform work under the grant. The vendor procurement should clearly identify preparation of an application and grant administration services within the solicitation document. The solicitation must take place prior to the initiation of the application process and comply with 2 CFR 200.318 – 200.326.

Procurement File Maintenance

The Procurement Checklist must be filled out per the prescribed procurement methodology used for each solicitation. This checklist must be maintained with each procurement file. Subsequent sealed bid or competitive proposal procurement activities will require the following documents be submitted to GLO-CDR:

- Procurement Checklist
- RFP/RFQ as applicable
- Listing of Bid Proposals/Summary of Scoring Criteria
- Grantee approval of selected vendor/winning bid
- Contract

GLO-CDR PROCUREMENT CHECKLIST

These documents must be provided to identify the actions taken to ensure procurement activities. GLO-CDR will not review or approve the compliance of procurement activities as they occur. GLO-CDR is available to provide technical assistance during the phases of the procurement process.

Note: Non-competitive or sole-source procurements require notification to and authorization by GLO-CDR.

Monitoring

Monitoring reviews to determine procurement compliance are performed independently of the process noted above as part of GLO-CDR's Subrecipient Monitoring Plan. GLO-CDR will monitor to the standards of 2 CFR 200.318 – 200.326 or state or local procurement law and policies if they are more restrictive.

Criteria

Sections 22 Procurement of the Federal Register, Vol. 81, No. 117 (June 17, 2016) for the 2015 allocations of Public Law 114–113 and Federal Register, Vol. 81, No. 224 (November 21, 2016) for the 2016 allocations of Public Law 114–223 and 245, combined with 24 CFR Part 570, direct the state to establish requirements for policies and procedures for units of general local government based on full and open competition (e.g., small purchase, sealed bids/formal advertising, competitive proposals).

GLO-CDR has established that subrecipients must follow the procurement methods as outlined in 2 CFR 200.318 – 200.326. This includes the requirement to follow state and local procurement law and policies as prescribed by 2 CFR 200.318(a) as well as the additional requirements stated in 2 CFR Part 200.

Subrecipients should update local procurement policies and procedures to correspond with the procurement and contract requirements of 2 CFR 200.318 – 200.326 for CDBG-DR funding.

GLO-CDR PROCUREMENT CHECKLIST

PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 1)

§200.318 General procurement standards

Task	Yes	No	N/A	Notes
1.1 Do you 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 Do you 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 Do you maintain a written standard of conduct addressing a real or apparent 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?				
1.4 Do you avoid acquisition of unnecessary or duplicative items? Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. § 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, considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources? § 200.318(h) and §200.213 (Suspension and Debarment)				
1.6 Did you determine no other contract other than time and materials type ¹ contract is suitable, and include a price ceiling that if exceeded, the contractor exceeds at their own risk? § 200.318(j)				
1.7 Do you have more 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)				
1.8 Do you responsibly resolve any related protests, disputes, or claims arising out of procurements? § 200.318(j)				

¹ 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.

GLO-CDR PROCUREMENT CHECKLIST

PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 2)

§200.319 Competition

Task	Yes	No	N/A	Notes
2.1 Procurement transactions cannot be conducted in a manner that does not provide full and open competition. Does the procurement involve any of the following? § 200.319(a)				
<ul style="list-style-type: none"> Placing unreasonable requirements on firms for them to qualify to do business? 				
<ul style="list-style-type: none"> Requiring unnecessary experience and excessive bonding? 				
<ul style="list-style-type: none"> Noncompetitive pricing practices between firms or between affiliated companies? 				
<ul style="list-style-type: none"> Noncompetitive contracts to consultants that are on retainer contracts? 				
<ul style="list-style-type: none"> Organizational conflicts of interest? 				
<ul style="list-style-type: none"> Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement? 				
<ul style="list-style-type: none"> Any arbitrary action in the procurement process? 				
2.2 Was the contractor that is bidding on the contract also involved with developing or drafting the specifications, requirements, statement of work, invitation for bids or request for proposals? (If so, that contractor must be excluded from competing for such procurements) § 200.319(a)				
2.3 Note: Procurement MUST be conducted in a manner that prohibits the use of statutorily or administratively imposing state or local geographical preferences in the evaluation of bids or proposals.				
2.4 Do you have written procurement procedures that ensure that all solicitations comply with the following? § 200.319(c)				
<ul style="list-style-type: none"> Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured? 				
<ul style="list-style-type: none"> Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals? 				
2.5 If you are using a prequalified list of persons, firms, or products to acquire goods and services, did you consider the following? § 200.319(d)				
<ul style="list-style-type: none"> Is the list current? 				
<ul style="list-style-type: none"> Does the list include enough qualified sources to ensure maximum open and free competition? 				
<ul style="list-style-type: none"> Were any potential bidders precluded from qualifying during the solicitation period? 				

GLO-CDR PROCUREMENT CHECKLIST

PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 3) §200.320 Method of Procurement

Task	Yes	No	N/A	Notes
3.1 Which of the following acceptable methods of procurement are you using?				
Micro-purchase procedures² § 200.320(a)				
<ul style="list-style-type: none"> To the extent practicable, are you distributing micro-purchases equitably among qualified suppliers? 				
Does the aggregate dollar of supplies or services exceed the micro-purchase threshold of \$3,000, or \$2,000 for construction contracts subject to the Davis-Bacon Act?				
Small purchase procedures³ § 200.320(b)				
<ul style="list-style-type: none"> Did you obtain price or rate quotations from an adequate number of qualified sources? 				
Sealed bids⁴ §200.320(c)				
<ul style="list-style-type: none"> Is a complete, adequate, and realistic specification or purchase description available for bidders? 				
<ul style="list-style-type: none"> Are two or more responsible bidders willing and able to compete effectively for the business in relation to the bid advertisement? 				
<ul style="list-style-type: none"> Can the procurement lend itself to a firm fixed price contract and the selection of the successful bidder be made principally based on price? 				
<ul style="list-style-type: none"> Did you solicit bids from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids? 				
<ul style="list-style-type: none"> Was the invitation for bids publicly advertised? 				
<ul style="list-style-type: none"> Did the invitation for bids include any specifications and pertinent attachments, and define the items or services for the bidder to properly respond? 				
<ul style="list-style-type: none"> Did you publicly open all bids at the time and place prescribed in the invitation for bids? 				
<ul style="list-style-type: none"> Did you award a firm fixed price contract award in writing to the lowest responsive and responsible bidder? 				

² Micro-purchases are purchases below \$3,000, and may be awarded without soliciting competitive quotations if you consider the price to be reasonable.

³ Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that does not cost more than the Simplified Acquisition Threshold (i.e. \$150,000), or (2) whatever amount State or local procurement rules set as the small purchase threshold – if more restrictive than the federal threshold.

⁴ Sealed 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.

GLO-CDR PROCUREMENT CHECKLIST

PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 3)
§200.320 Method of Procurement CONTINUED

Task	Yes	No	N/A	Notes
Sealed bids (continued)				
<ul style="list-style-type: none"> If any bids were rejected, was there a sound documented reason supporting the rejection? 				
3.2 Procurement by competitive proposals ⁵ If this method is used, the following requirements apply: § 200.320(d)				
<ul style="list-style-type: none"> Did you publicize the Requests for Proposals (RFPs) and identify all evaluation factors and their relative importance? 				
<ul style="list-style-type: none"> Did you solicit proposals from an adequate number of qualified sources? 				
<ul style="list-style-type: none"> Did you have a written method for conducting technical evaluations of the proposals received and for selecting recipients? 				
<ul style="list-style-type: none"> Did you award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered? 				
Note: You may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.				
3.3 Procurement by noncompetitive proposals ⁶ Do one or more of the following circumstances apply? § 200.320(f) Note: When only one bid is received in response to a competitive bid solicitation, you do not have price competition. If you decide to award on the basis of a single submitted bid price, without negotiation, you must: 1) justify the price is fair and reasonable; 2)compare the bid price to your own in-house estimate or engineers estimate and past prices paid for the same or substantially similar item(s) in the past; 3)obtain information from the marketplace; 4) obtain a complete cost breakdown; 5) perform a cost analysis of the proposed price and ; 6) document the rationale for the award decision and place in the procurement file.				
<ul style="list-style-type: none"> The item is available only from a single source. 				
<ul style="list-style-type: none"> The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. 				

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<ul style="list-style-type: none"> The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity. 				
<ul style="list-style-type: none"> After solicitation of several sources, competition is determined inadequate. 				

⁵ Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

⁶ Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (or an improperly limited number of) source(s).

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PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 4)

§200.321 Contracting with Small and Minority Businesses, Women’s Business enterprises, and Labor Surplus Area Firms.

Task	Yes	No	N/A	Notes
4.1 You must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises and labor surplus area firms are used when possible. § 200.321(a) Does your procurement include the following? § 200.321(b)				
<ul style="list-style-type: none"> Do you place qualified small and minority businesses and women’s business enterprises on solicitation lists? 				
<ul style="list-style-type: none"> Do you assure that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources? 				
<ul style="list-style-type: none"> Do you divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises? 				
<ul style="list-style-type: none"> Did you establish delivery schedules where the requirement permits, which encourages participation by small and minority businesses, and women’s business enterprises? 				
<ul style="list-style-type: none"> When appropriate, did you use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce? 				
<ul style="list-style-type: none"> Do you require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above? 				

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PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 5)
§200.323 Contract Cost and Price

Task	Yes	No	N/A	Notes
<p>5.1 Did you conduct a cost or price analysis about every procurement action more than the Simplified Acquisition Threshold including contract modifications? § 200.323(a)</p> <p>Note: You must perform a cost or price analysis relating to every procurement action more than the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis are dependent on the facts surrounding the procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under Subpart E—Cost Principles. You may reference its own cost principles that comply with the Federal cost principles.</p>				
<p>5.2 Did you negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed? § 200.323(b)</p> <p>Note: You must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.</p>				

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PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 6)

§200.325 Bonding Requirements

Task	Yes	No	N/A	Notes
6.1 For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements provided that the Federal awarding agency or pass-through entity has decided that the Federal interest is adequately protected. If such a determination has not been made, does the procurement include the following?				
<ul style="list-style-type: none"> A bid guarantee⁷ from each bidder equivalent to five percent of the bid price? § 200.325(a) 				
<ul style="list-style-type: none"> A performance bond⁸ on the part of the contractor for 100 percent of the contract price? § 200.325(b) 				
<ul style="list-style-type: none"> A payment bond⁹ on the part of the contractor for 100 percent of the contract price? § 200.325(c) 				

⁷ The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

⁸ A performance bond is one executed relating to a contract to secure fulfillment of all the contractor's obligations under such contract.

⁹ A payment bond is one executed relating to a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 7)

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

7.1	<p>In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering Appendix II to Part 200. As stated previously in this document, to understand the requirements fully, please review the provisions of Appendix II to Part 200 in the Code of Federal Regulations.</p>
	<ul style="list-style-type: none"> • Contracts for more than the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provided for such sanctions and penalties as appropriate.
	<ul style="list-style-type: none"> • Contracts more than \$10,000 must address termination for cause and for convenience by the non-Federal entity including how it will be affected and the basis for settlement.
	<ul style="list-style-type: none"> • Contracts that meet the definition of “federally assisted construction contract” must include the equal employment opportunity clause.
	<ul style="list-style-type: none"> • Construction contracts more than \$2,000 must include a provision for compliance with the Davis-Bacon Act.
	<ul style="list-style-type: none"> • Contracts more than \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 W.S.C 3702 and 3704.
	<ul style="list-style-type: none"> • Contracts entered into with a small business firm or nonprofit organization and the Federal award meets the definition of “funding agreement”, must comply with the requirements of 37 CFR Part 401.
	<ul style="list-style-type: none"> • Contracts more than \$150,000 must contain a provision that requires the non-Federal award to agree to comply with the Clean Air Act and the Federal Water Pollution Control Act.
	<ul style="list-style-type: none"> • Contracts must not be entered into with parties listed on the governmentwide exclusions in the System for Award Management (SAM).
	<ul style="list-style-type: none"> • Contractors that apply or bid for an award more than \$100,000 must file the required certification regarding the Byrd Anti-Lobbying Amendment.
	<ul style="list-style-type: none"> • Contracts must include provisions regarding section 6002 of the Solid Waste Disposal Act.
	<ul style="list-style-type: none"> • Contracts must include a Section 3 clause, if funded by the Department of Housing and Urban Development (HUD). The Section 3 program requires recipients of certain HUD financial assistance, to the greatest extent possible, provide job training, employment, and contract opportunities for low- or very-low income residents about projects and activities in their neighborhoods.
	<ul style="list-style-type: none"> • Contractors must allow access to any books, documents, papers, or records of the project by the City, State, Federal agencies, and the Comptroller General of the United States. Records must be maintained for five years after the Grantee formally closes out each program.