

TEXAS GENERAL LAND OFFICE



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

BACKGROUND:

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 administration Community Development Block Grant Disaster Recovery (CDBG-DR) funds, herein referred to as the “grantee”. Eligible applicants (city and county governments) located within, or performing activities within a federally declared Texas county, are herein referred to as “subrecipient” and is the intended audience of this procurement guidance.

Procurement requirements are applicable to subrecipients receiving CDBG-DR funding from any of the following grants:

- 2015 Floods grant, **B-16-DH-48-0001**, in accordance with Federal Register, [Vol. 82, No. 150](#) and [Vol. 81, No. 117](#) and as outlined in the most current 2015 Flood State of Texas Action Plan.
- 2016 Floods grant, **B-16-DL-48-0001**, in accordance with Federal Register, [Vol. 81, No. 224](#), [Vol. 82, No. 11](#), and [Vol. 82, No. 150](#) and as outlined in the most current 2016 Flood State of Texas Action Plan.
- Harvey grants, including **B-17-DM-48-0001** and **B-17-DL-48-0002**; in accordance with Federal Register, [Vol. 83, No. 28](#) and as outlined in the most current Hurricane Harvey State of Texas Action Plan
- Mitigation grant, **B-18-DP-48-0002**, in accordance with Federal Register, [Vol. 84, No. 169](#) and as outlined in the most current CDBG-MIT State of Texas Action Plan.

Subrecipients receiving CDBG-DR funding are required to follow the procurement standards of [2 CFR 200.318 to 200.326](#) and the contract provisions within Appendix II to Part 200. Procurement standards are Federal Register grant-imposed requirements that are incorporated into all subrecipient agreements.

GLO-CDR PROCUREMENT CHECKLIST

The objective of this procurement checklist is to assist subrecipients administering CDBG-DR funds in complying with the federal procurement requirements and reasonably ensure the allowability of eligible program expenses. Failure to procure goods and services in compliance with federal requirements is subject to the recapture of program funds.

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. Subrecipients should consult their legal counsel in adapting Federal procurement requirements into their existing procurement function.

Procurement Policies and Procedures

GLO-CDR strongly advises that each subrecipients, at least annually, to evaluate their procurement policies and procedures to ensure they comply with the requirements of [2 CFR 200.318 to 200.326](#). Subrecipients are strongly encouraged to use this procurement checklist to reconcile their existing procurement policies and procedures to determine whether each section of the procurement checklist is clearly addressed within their procurement manual.

This can be achieved by filling out the procurement checklist and identifying the page number of a subrecipient's policies and procedures that specifically identifies the Federal procurement requirement noted in each section of the checklist. The procurement checklist should be incorporated into the procurement policy and procedure manual, enabling subrecipient staff in understanding the federal procurement requirements as well as facilitating with audits and monitoring reviews by external parties.

Procurement File Maintenance

The Procurement Checklist must be filled out for each procurement action taken by a subrecipient, according to the procurement methodology used for each solicitation. This checklist must be maintained for each procurement activity and within each procurement file.

GLO-CDR will be verifying, through grant management or monitoring, whether the procurement checklist has been maintained for procurement actions taken by subrecipients. In addition to the procurement checklist, subrecipient's will be required to provide the following key documents to assess compliance with procurement activities:

- Independent Cost Estimate
- RFP/RFQ as applicable
- Listing of Proposals Received
- Summary of Evaluations Performed
- Cost and Price Analysis
- Grantee approval of selected vendor/winning proposal
- Contract

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The procurement function is a subrecipient's responsibility. GLO-CDR does not review or pre-approve subrecipient procurement activities, particularly for potential subrecipients without an executed contract. A potential subrecipient choosing to solicit services before a contract is executed must do so in compliance with 2 CFR 200.318-200.326 as stipulated in the Federal Register and encouraged to utilize this procurement checklist.

Note: GLO-CDR is required to be notified and approve non-competitive or sole-source procurements (2 CFR 200.320(f)(3)) for subrecipients with executed GLO contracts.

Technical Assistance

Subrecipients may request procurement technical assistance by contacting their assigned grant manager or submitting requests to:

- CDR@recovery.Texas.Gov
- CDR.Mitigation@recovery.texas.gov

Monitoring

Monitoring for compliance of procurement activities is independent of the process noted above as part of GLO-CDR's Subrecipient Monitoring Plan. GLO-CDR will monitor against the standards of 2 CFR 200.318 – 200.326. However, subrecipient incorporating both Federal and state or local procurement laws and requirements will be monitored to the more restrictive procurement standards.

GLO-CDR does not pre-approve procurement activities for subrecipients or potential subrecipients attempting to obtain a CDBG-DR or CDBG-MIT award. The procurement function is the subrecipient's responsibility. A potential subrecipient choosing to solicit services before a contract is executed must do so in compliance with 2 CFR 200.318-200.326 as stipulated in the Federal Register.

The [HUD Exchange](#) and [GLO Procurement and Contracting](#) websites provide significant guidance and tools for performing procurement activities.

GLO-CDR PROCUREMENT CHECKLIST

PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 1)

§200.318 General procurement standards

Procurement Requirements	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 Do the Subrecipient’s policy and procedures identify the 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 the Subrecipient’s policy and procedures identify 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? §200.318(c)				
1.4 Do the Subrecipient’s policies and procedures avoid the 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 Do the Subrecipient’s policies and procedures encourage entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services to foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government? §200.318(e)				
1.6 Do the Subrecipient’s policies and procedures encourage the use of Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. §200.318(f)				

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<p>1.7 Do the Subrecipient’s policies and procedures encourage the use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions? Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. §200.318(g)</p>				
<p>1.8 Do the Subrecipient’s policies and procedures identify the contract being awarded is 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)</p>				
<p>1.9 Do the Subrecipient’s policies and procedures identify how it will maintain records sufficient to detail the history of procurement? These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. §200.318(i)</p>				
<p>1.9 Do the Subrecipient’s policies and procedures identify the manner for determining that 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? §200.318(j)(1)</p>				
<p>1.10 Do the Subrecipient’s policies and procedures identify setting a ceiling price that a contractor exceeds at its own risk, including the oversight asserted for time and material contracts to obtain reasonable assurance that the contractor is maintaining efficient methods and effective cost controls? §200.318(j)(2)</p>				
<p>1.11 Do the Subrecipient’s policies and procedures identify the responsibility, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements? These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Subrecipient of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the Subrecipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. §200.318(k)</p>				

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PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 2) §200.319 Competition

Procurement Requirements	Yes	No	N/A	Note
2.1 Procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate an unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Situations considered to be restrictive of competition include but are not limited to: §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 The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.				
2.3 Does the Subrecipient 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? 				

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<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 using a prequalified list of persons, firms, or products to acquire goods and services, has the Subrecipient considered 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? 				

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

Procurement Requirements	Yes	No	N/A	Note
3.1 Which of the following methods of procurement is used by the Subrecipient?				
Micro-purchase procedures §200.320(a)				
<ul style="list-style-type: none"> To the extent practicable, is the Subrecipients 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 procedures §200.320(b)				
<ul style="list-style-type: none"> Was price or rate quotations obtained from an adequate number of qualified sources? 				
Sealed bids §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"> Were bids solicited 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"> Were all bids publicly opened at the time and place prescribed in the invitation for bids? 				
<ul style="list-style-type: none"> Was a firm-fixed-price contract awarded in writing to the lowest responsive and responsible bidder? 				
<ul style="list-style-type: none"> If any bids were rejected, was there a sound documented reason supporting the rejection? 				

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Procurement by Competitive Proposals §200.320(d)				
<ul style="list-style-type: none"> • Were Requests for Proposals (RFPs) publicly advertised and did they identify all evaluation factors and their relative importance? 				
<ul style="list-style-type: none"> • Were proposals solicited from an adequate number of qualified sources? 				
<ul style="list-style-type: none"> • Is there a written method for conducting technical evaluations of the proposals received and for selecting recipients? 				
<ul style="list-style-type: none"> • Was a contract awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered? 				
<p>Note: Competitive proposal procedures may be used for qualifications-based procurement of architectural or 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 the 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.</p>				
<p>Procurement by noncompetitive proposals §200.320(f):</p> <p>Note: When only one bid is received in response to a competitive bid solicitation, a Subrecipient does not have price competition. If the Subrecipient proceeds with awarding based on a single submitted bid price, the Subrecipient must: 1) justify the price is fair and reasonable; 2) compare the bid price to their in-house estimate or engineers estimate and past prices paid for the same or substantially similar item(s); 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.</p>				
<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 the competitive solicitation. 				
<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. 				

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<ul style="list-style-type: none">• After solicitation of several sources, competition is determined inadequate.				
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Note: In addition to filling out the GLO CDR Procurement Checklists, subrecipients must also fill out the [Non-Competitive Procurement Checklist](#) (linked) and located on [GLO Procurement and Contracting](#)

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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.

Procurement Requirements	Yes	No	N/A	Note
4.1 Subrecipients 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 the procurement file include the following §200.321(b)?				
<ul style="list-style-type: none"> Do the Subrecipient place qualified small and minority businesses and women’s business enterprises on the solicitation lists? 				
<ul style="list-style-type: none"> Does the Subrecipient assure that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources? 				
<ul style="list-style-type: none"> Does the Subrecipient 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"> Establishing 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, were 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"> Does the Subrecipient 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**

Procurement Requirements		Yes	No	N/A	Note
5.1	<p>Did the Subrecipient conduct a cost or price analysis of every procurement action more than the Simplified Acquisition Threshold including contract modifications? §200.323(a)</p> <p>Note: Subrecipients 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. Subrecipients may reference their cost principles that comply with the Federal cost principles.</p>				
5.2	<p>Was profit negotiated 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: Profit must be negotiated 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**

Procurement Requirements	Yes	No	N/A	Note
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 guarantee from each bidder equivalent to five percent of the bid price §200.325(a)? 				
<ul style="list-style-type: none"> • A performance bond on the part of the contractor for 100 percent of the contract price §200.325(b)? 				
<ul style="list-style-type: none"> • A payment bond on the part of the contractor for 100 percent of the contract price §200.325(c)? 				

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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**

Procurement Requirements	
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.