



TEXAS GENERAL LAND OFFICE
GEORGE P. BUSH, COMMISSIONER

e-BID PROCUREMENT GUIDANCE - SEALED BIDS

The Texas General Land Office Community Development and Revitalization division (GLO-CDR) is issuing guidance to existing and future subrecipients on conducting Sealed Bid procurements on an electronic platform. Subrecipients have requested guidance on implementing an electronic solicitation process to continue with disaster recovery efforts in their communities. The guidance provided takes into consideration Governor Abbott's Executive Orders to Mitigate Spread of COVID-19 in Texas.

Currently, the HUD Exchange website does not include guidance for conducting electronic procurement solicitations. To meet the needs of our existing and future subrecipients, the suggested guidelines that follow are based on performing a crosswalk between sealed bid federal procurement criteria and suggested "virtual" steps that would support the actions taken that would still allow an e-Sealed Bid solicitation to comply with federal requirements. Please note that any electronic bid and proposal procedures previously adopted by a subrecipient municipality/county pursuant to Texas Local Government Code § 252.0415 and § 262.0225, *Procedures for Electronic Bids or Proposals*, should adhere to the guidelines and federal requirements as outlined below.

❖ **2 CFR §200.318(i) General procurement standards.**

§200.318(i) The non-Federal entity must maintain records sufficient to detail the history of procurement.

Ensuring the integrity of the procurement process is critical and must be clearly described in a subrecipient's policy and procedure manual, with particular emphasis on the virtual steps that will be taken and the documentation that will be maintained to detail the history of procurement activities. Simply identifying the use of an e-based platform in a procurement manual is unacceptable.

The creation of a cross-walk (Exhibit #1) is strongly encouraged and should be used as a supplement to a subrecipient's procurement policy and procedure manual. The purpose of the crosswalk is to ensure that each virtual step(s) and source documents correspond to the specific procurement criteria that will be executed to ensure compliance with each procurement criterion. Please note that not every procurement standard will have a corresponding virtual step.

The degree to which e-based procurements will be utilized is a subrecipient's decision. Subrecipients must update their existing procurement policy and procedure manual to identify their use of an e-based solicitation platform, including whether the use of e-based solicitations is a temporary or permanent change within their procurement function.

Reference: <https://www.ecfr.gov/cgi-bin/text-idx?node=2:1.1.2.2.1.4.31&rgn=div7>

❖ 2 CFR §200.320 Procurement by Sealed Bid

§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.

This requirement is an administrative step that must define how sealed bids will be publicly solicited and the role e-bidding will have on this methodology. Subrecipients may choose to use an e-bid platform exclusively or a combination of e-bidding and traditional protocol. Policies and procedures should be clear in defining how formal advertising will be executed (i.e. newspaper publication advertisement, plan rooms, subrecipient website, electronic platforms, etc.). The solicitation document must also identify the outlets used for public solicitation.

§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;

This requirement is an administrative step that is not impacted by an e-bid platform. Subrecipients are required to establish a detailed description of the scope of work.

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

This requirement is an administrative step that is not impacted by an e-bid platform. Subrecipients are required to ensure that a sufficient number of proposals are received. If only one bid is received, subrecipients should follow the guidance provided within Chapter 10, Non-Competitive Proposals, *BUYING RIGHT CDBG-DR and Procurement: A Guide to Recovery* (p./hyperlink)

(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.

This requirement is an administrative step that is not impacted by an e-bid platform.

§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;

The solicitation document must identify how the solicitation will occur, whether the publication of the solicitation will be an exclusive e-bid platform, a traditional protocol, or a combination thereof, and identify the outlets used for public solicitation (i.e. newspaper publication advertisement, plan rooms, subrecipient website, electronic platforms, etc.).

Outreach efforts and electronic platforms should be facilitated to the extent possible and strongly support free and open competition. Unreasonable or overly restrictive electronic platforms may be considered as a limitation to free and open competition.

(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;

The solicitation document must clearly define “public opening” and establish whether it will be an exclusive e-bid platform, a traditional protocol, or a combination thereof. All bids, including electronic bids, shall remain effectively unopened until the proper time to unseal such bids. Video conferencing technology may also be used for bid openings.

Subrecipients may elect to receive proposals via electronic submission, via hard copy format, or any combination thereof. Subrecipients should have measures in place to ensure the identification, security, and confidentiality of electronic bids. Subrecipients electing to use e-bidding platforms (i.e., CIVCAST, BidClerk, Dodge Reports) that require registration should identify whether the platform is registered to the subrecipient or used on the subrecipient's behalf. Subrecipients delegating the e-bid platform to a contracted vendor should consider how its use and documentation comply with both procurement file requirements (§200.318(i)) and record retention requirements (§200.333). Maintaining access to such a website, in and of itself, does not comply with the aforementioned requirements as the website platform is not proprietary to the subrecipient.

Subrecipients should consider compliance with the Texas Open Meetings Act and the impact of Governor Abbott’s proclamation to open meetings and suspension of certain Open Meetings Act provisions (Exhibit #2, <https://www.texasattorneygeneral.gov/open-government/open-meetings-act-update>). Subrecipients should consult with its legal department to coordinate compliance measures and incorporate those measures into its procurement policy and procedure manual.

(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

This requirement is an administrative step that is not impacted by an e-bid platform.

The cost plus a percentage of cost and percentage of construction cost methods are strictly prohibited. Contracts will be monitored against this requirement. Expenses resulting from a cost-plus contract are disallowed costs. Incurred expenses will not be reimbursed. Conversely, reimbursed expenses are subject to recapture.

(v) Any or all bids may be rejected if there is a sound documented reason.

This requirement is an administrative step that is not impacted by an e-bid platform.

Reference:https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=1adebae7713be3ac6e8fbf69ebd8209c&ty=HTML&h=L&mc=true&n=pt2.1.200&r=PART#se2.1.200_1320

❖ **Procurement 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/>

HUD Procurement Checklist: <https://files.hudexchange.info/resources/documents/CDBG-DR-Procurement-Example-Procurement-Checklist.docx>

GLO Procurement and Contracting Guidance:
<https://recovery.texas.gov/local-government/resources/procurement-contracting/index.html>

GLO Procurement Checklist:
<https://recovery.texas.gov/files/resources/contract-procurement/procurement-checklist.pdf>