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 201

Agenda

• Procurement 101 Recap
• Relevant Resources
• Competition
• Methods of Procurement
• Cost & Price Analysis
• Negotiation
• Common Findings
• Questions?

Presenter
Steve Higginbotham, ICF

Icons

Future Training
Applied to GLO-CDR
Applied to Subrecipients
Learning Objectives

After the training, Procurement 201 participants will:

1. Understand how to conduct procurement in accordance with GLO’s requirements to follow federal requirements in 2 CFR Part 200, with consideration given to Texas government and local government codes

2. Understand and be able to avoid common findings and concerns
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 200.318-326.
Procurement Basics

- Update procurement policies and procedures to correspond with 2 CFR 200.318-200.326
- Follow a full and open competitive process in securing all products and services
- Perform an independent price and cost analysis
- Failure to comply will likely result in ineligible expenses
True or False
A subrecipient *may* require bidders to have experience working within the subrecipient’s county, as that will make their service delivery more effective.

*False*
Imposing geographical preferences in the evaluation of bids or proposals *directly violates* the full and open competitive process requirement, per 2 CFR 200.319.
Key Federal Resources

Buying Right
CDBG-DR and Procurement: A Guide to Recovery

Key Program Resources

DIGITAL RESOURCE MANUAL: PROCUREMENT 201

2 CFR 200.317 PROCUREMENT BY STATES
In the HUD-published *Resident 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, 2 CFR Part 570.488(a) takes precedence over Part 200. The regulation in 24 CFR Part 570.488(a) 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 abrogation requirement by Federal Register Notice. The State CDBG regulations in procurement found at 24 CFR Part 570.488(a).

What’s New?
A state will follow its own established policies and procedures, which may not be as detailed as the Federal regulations.

What to Know
• All other public jurisdictions, such as Counties and Municipalities, must follow the procurement standards—unless the State specifically requires them to follow procurement guidelines.

Keep in Mind
• Since it comes to procurement with CDBG-DR funds, States are subject to different than other governmental entities.
• States should be written policies. Below is the citation from 2 CFR 488(a). When procuring property or services to be paid for in whole or in part with CDBG Acorns, the State should establish requirements.

Analysis: 2 CFR 200.317

Previous Regulations/Changes
• See 85.39(k), Program Administrative Reqs for States 24 CFR 570.488 is still required.

Methods of Procurement
The first step in managing the procurement process is knowing which method can be used, under different circumstances, and how the federal requirements interact. The major methods of procurement are listed below. Reference the Procurement for more details.
• Micro-purchases: 2 CFR 200.320(a)
• Small Purchases: 2 CFR 200.320(b)
• Sealed Bid/Competitive Advertising: 2 CFR 200.320(c)
• Competitive Proposals: 2 CFR 200.320(d)
Key Program Resources

- GLO Procurement and Contracting Website
- GLO Procurement Checklist and Guidance for Subrecipients
## Key State Resources

<table>
<thead>
<tr>
<th>Code</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 171</td>
<td>Conflicts of Interest of Officers of Municipalities, Counties and Certain Other Local Governments</td>
</tr>
<tr>
<td>Chapter 252</td>
<td>Purchasing and Contracting Authority of Municipalities</td>
</tr>
<tr>
<td>Chapter 262</td>
<td>Purchasing and Contracting Authority of Counties</td>
</tr>
<tr>
<td>Chapter 573</td>
<td>Degrees of Relationship &amp; Nepotism Prohibitions</td>
</tr>
<tr>
<td>Chapter 2253</td>
<td>Public Work Performance and Payment Bonds</td>
</tr>
</tbody>
</table>
Local Governments must:

- Follow procurement requirements at 2 CFR 200.319
- Follow TX Government Code and TX Local Government Code when more restrictive than 2 CFR 200
- If TX code conflicts with 2 CFR 200, follow 2 CFR 200
- Subrecipients may need to update procurement processes
Subrecipients must conduct procurement transactions that provide “full and open competition,” per 2 CFR 200.319.

Examples of TX Local Code Provisions that are Prohibited under 2 CFR 200.319:

- LOC GOV'T § 252.022 and 262.024 and general or discretionary exemptions from competitive bidding.
- LOC GOV'T § 271.905 and consideration of location of a bidder’s principal place of business.
Methods of Procurement

2 CFR Part 200 vs. Texas State and Local Government Codes

Local Governments must:
• Follow procurement requirements at 2 CFR 200.320
• Follow TX Government Code and TX Local Government Code when more restrictive than 2 CFR 200
• If TX code conflicts with 2 CFR 200, follow 2 CFR 200
• Subrecipients may need to update procurement processes
Methods 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

<table>
<thead>
<tr>
<th>Procurement Type</th>
<th>Reasonable-ness Method</th>
<th>Solicitation Method</th>
<th>Applications</th>
<th>Dollar Thresholds, if applicable</th>
<th>Different from TX Local Government Code?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Micro-Purchases</strong></td>
<td>Price Analysis</td>
<td>No solicitation required</td>
<td>Supplies, Produced Items, Single-task Service</td>
<td>Under $2,000 for construction, Under $10,000 for all other purchases</td>
<td><strong>YES:</strong> 2+ quotes required on contracts between $3,000 and $50,000, with no distinction between construction and non-construction activities. Formal bids required on all purchases more than $50,000.</td>
</tr>
<tr>
<td>2 CFR 200.320(a)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Small Purchase</strong></td>
<td>Price Analysis</td>
<td>Quotations Submitted Bids</td>
<td>Produced Items, Single-task Service, Supplies</td>
<td>Under $2,000 for construction, $250,000 or less for produced items, services or supplies</td>
<td></td>
</tr>
<tr>
<td>2 CFR 200.320(b)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# Methods of Procurement

<table>
<thead>
<tr>
<th>Procurement Type</th>
<th>Reasonableness Method</th>
<th>Solicitation Method</th>
<th>Applications</th>
<th>Dollar Thresholds, if applicable</th>
<th>Different from TX Government Code?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sealed Bid Formal Advertising 2 CFR 200.320(c)</td>
<td>Price Analysis Pre-Award Cost Analysis</td>
<td>Submitted Bids</td>
<td>Construction Items Produced or Designed Items</td>
<td>All construction contracts greater than $2,000 Produced or designed items over $250,000</td>
<td>YES: Formal bids required on all purchases more than $50,000. Cannot intentionally or knowingly make separate, sequential or component purchases to avoid the competitive bid process.</td>
</tr>
<tr>
<td>Competitive Proposals 2 CFR 200.320(d)</td>
<td>Price Analysis Cost Analysis</td>
<td>Submitted Bids</td>
<td>Professional Services Multi-task Services Designed Items</td>
<td>Professional Services and/or Multi-task Services over $250,000 Designed items over $250,000 when Sealed Bid is not appropriate</td>
<td></td>
</tr>
</tbody>
</table>
## Methods of Procurement

<table>
<thead>
<tr>
<th>Procurement Type</th>
<th>Reasonableness Method</th>
<th>Solicitation Method</th>
<th>Applications</th>
<th>Dollar Thresholds, if applicable</th>
<th>Different from TX Government Code?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Competitive Proposals</td>
<td>Cost Analysis</td>
<td>Submitted Proposals</td>
<td>Produced Items</td>
<td>No particular threshold, but may only be used when other methods are not feasible.</td>
<td><strong>YES:</strong> Exceptions allowed to the competitive bidding or proposal requirements for discretionary items, such as a public calamity, to preserve public health, safety or welfare and other exemptions.</td>
</tr>
</tbody>
</table>

**2 CFR 200.320(f)**
## Methods of Procurement

<table>
<thead>
<tr>
<th>Procurement Type</th>
<th>Reasonableness Method</th>
<th>Solicitation Method</th>
<th>Applications</th>
<th>Dollar Thresholds, if applicable</th>
<th>Different from TX Government Code?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Architect and Engineering 2 CFR 200.320(d)(5)</td>
<td>Cost Analysis, Subject to Negotiation of Fair and Reasonable Compensation</td>
<td>Submitted Proposals (Requests for Qualifications)</td>
<td>Architectural and/or Engineering Professional Services</td>
<td>No threshold</td>
<td><strong>YES</strong>: Cannot use competitive bidding procedures for services of architects, engineers, CPAs, land surveyors, physicians, optometrists, landscape architects, geoscientists or state-certified appraisers.</td>
</tr>
</tbody>
</table>
Test Your Knowledge

True or False
A subrecipient may use its local or state laws in some procurement cases and may follow federal procurement standards in other cases, depending on which rule is most efficient for the subrecipient at the time

False
The GLO has required all its subrecipients to follow federal procurement standards at 2 CFR 200.318-326

• Subrecipients are required to use the local or state procurement standards only in cases where they are more restrictive than 2 CFR Part 200
• Subrecipient must be consistent in their use of procurement standards
True or False

In the event of an emergency, such as a flood, a subrecipient is not required to follow any of the methods of procurement and may pick the most available vendors and pay whatever is necessary to help in the recovery

False

For costs to be eligible for reimbursement or prospective work using CDBG-DR (or FEMA) funds, procurements must have been carried out per the correct method of procurement. The subrecipient may be able to follow the non-competitive proposal process under 2 CFR 200.320(f), but critical procedures such as performing a cost analysis, solicitation and negotiation requirements apply.
Test Your Knowledge

True or False
In preparation to receive CDBG-DR funding, a city can assign grant administration work to a firm on a retainer contract, as they are already being paid and using them is more efficient than hiring another firm

False
Providing non-competitive contracts to consultants that are on retainer contracts is prohibited under 2 CFR 200.319. If the city procures a grants administrator through an approved procurement method where the scope of work includes current and future disaster work, and the vendor is not paid on retainer, then the city may be able to engage that vendor for services included in the original solicitation and contract.
Subrecipients must perform a price analysis in connection with every Micro Purchase and Small Purchase procurement action

Some common methods include:

• Comparing prices received in response to the solicitation to each other

• Comparing proposed prices to other similar contracts received in recent past (may factor market, inflation and/or material price changes)

• Reviewing other price lists or market prices of similar products to determine the market prices generally available to the public
Subrecipients must perform a price analysis AND cost analysis for every procurement action above the Simplified Acquisition Threshold, including contract modifications

• Independent analysis can be done by staff, 3rd party consultants, or examination of existing price lists and product catalogs (RSMeans, Xactimate, etc.)
• Identify which staff or vendor will perform the independent analysis and ensure the analysis is performed before issuing the procurement and receiving the bids
When and why should I perform a Cost Analysis?

- The level of analysis is context specific, but as a starting point, subrecipients must make independent estimates **BEFORE** receiving proposals.

- Estimating costs before publishing a bid, RFP, or RFQ provides a point of reference for review when bids are received, for budgeting and ensuring the services are allowable, necessary, reasonable and related (allocable) to completing the project.
Additional cost analyses may be required in special circumstances

- Cases where only one bid is received
- Paying costs incurred while terminating a contract
- Awarding a cost-reimbursement contract
- Negotiating modifications to contracts that impact price. Remember TX local code requirements (ex: original contract may not increase by more than 25%)
## Cost vs. Price Analysis

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel Costs</td>
<td>Yes</td>
<td>Cost of laborers (direct/indirect) compared with prevailing wage rates, cost analysis, and other comparable contracts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Travel Costs</td>
<td>Yes</td>
<td>Estimated amount of travel and relative costs to complete the work</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equipment Costs</td>
<td>Yes</td>
<td>Estimated amount of equipment needed to complete the job</td>
<td>No</td>
<td>NA</td>
</tr>
<tr>
<td>Supply Costs</td>
<td>Yes</td>
<td>Estimated units of supplies needed to complete the job, accounting for market adjustments, inflation, and weather challenges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Direct Costs</td>
<td>Yes</td>
<td>Other estimated direct costs required to complete the scope of work</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# Cost vs. Price Analysis

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Indirect Costs</td>
<td>Yes</td>
<td>Estimated allowable fringe benefit rate for personnel or federally approved indirect cost rate</td>
<td>No</td>
<td>NA</td>
</tr>
<tr>
<td>Profit</td>
<td>Yes</td>
<td>Estimated profit contractor can reasonably earn on the job considering risk, complexity of work, level of required subcontracting, etc.</td>
<td>Yes</td>
<td>Is it reasonable to rent a room for 5,000 people if you expect 500 attendees?</td>
</tr>
<tr>
<td>Are work elements necessary and reasonable?</td>
<td>Yes</td>
<td>Is it necessary/reasonable to build a fire station with four fire engine bays if the station owns one fire engine and had one bay prior to the storm?</td>
<td>Yes</td>
<td>Is it reasonable to rent a room for 5,000 people if you expect 500 attendees?</td>
</tr>
<tr>
<td>Total Cost of Service of Product</td>
<td>Yes</td>
<td>How does the total cost compare to similar past projects, giving consideration to inflation and market forces?</td>
<td>Yes</td>
<td>The cost to rent a room for 500 people for a community event</td>
</tr>
</tbody>
</table>
Performing a Cost Analysis

Once a bidder has been selected, perform due diligence prior to award. Potential components include:

1. Determine if all cost items in the proposal are **necessary**
2. Determine if costs reflect the proposed technical approach and required work
3. Perform internal and external reference checks to verify that the vendor has a record of performing on budget and on schedule
4. Compare costs previously incurred by the same vendor and/or similar work performed by other contractors
5. Compare the proposal to an independent pre-bid cost estimate
Negotiations

- **Micro and Small Purchases**: Contracting Officers may negotiate price and other purchasing terms where appropriate considering other responses and past contracts for similar work.

- **Sealed Bids**: Not subject to negotiation. The Grantee should choose the lowest responsive bid from a **responsible** bidder.
• **Competitive Procurements:** When performing a cost analysis and negotiating a contract that provides for a profit/fee, subrecipients must negotiate profit separately. Document any negotiations of profit, benefits, overhead, staff and other components analyzed in the cost analysis.

• Final contract should be based on and supported by the cost analysis. Subrecipients may include contractor’s risk, contractor’s investment, level of subcontracting, etc. when calculating reasonable profit.
Negotiations (cont.)

- **Architect/Engineering Services (RFQ):** Negotiation may be required to ensure fair and reasonable compensation is provided to the selected firm.

- **Non-Competitive Procurements:** Highly discouraged, but if they are pursued, subrecipients must negotiate profit as a separate element of the price for each contract in which there is no price competition.
For all methods of procurement, document components of the negotiation details, including agreements that may differ from the proposal which led to a final contract.
Additional Requirements

- Bid Bond and Other Bonding Requirements
  2 CFR 200.325 and TX Gov't Code Chapter 2253
- 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
Common Findings or Concerns

- Prohibited use of cost plus percentage of cost contracting
- Failure to prepare independent cost estimates prior to receiving bids or proposals
- Failure to perform cost and price analysis on contract modifications or change orders
- Inclusion of non-competitive practices/requirements in procurement documents
- Failure to have an adequate contract administration system in place to track the history of each procurement action
Questions?
Survey

https://www.surveymonkey.com/r/Procur201