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

Key Resources

DIGITAL RESOURCE MANUAL: PROCUREMENT 101

2 CFR 200.317 PROCUREMENT BY STATES
In the HHS-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(j) takes precedence over Part 200. The regulation in 24 CFR 570.489(j) is found immediately below in the "Keep in Mind" section for 2 CFR 200.317.

<table>
<thead>
<tr>
<th>2 CFR 200.317</th>
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<tbody>
<tr>
<td>Analysis: 2 CFR 200.317</td>
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<tr>
<td>Previous Regulations/Creations</td>
</tr>
<tr>
<td>• See 85.399(a). Program Administrative Reqs. for States 24 CFR 570.489 is still required.</td>
</tr>
<tr>
<td>What It Means?</td>
</tr>
<tr>
<td>• A State will follow its own established policies and procedures, which may not be exactly the same as the Federal regulations.</td>
</tr>
<tr>
<td>• All other public jurisdictions, such as Counties and Municipalities, must follow procurement standards—unless the State specifically requires them to follow procurement guidelines.</td>
</tr>
<tr>
<td>Keep in Mind</td>
</tr>
<tr>
<td>• What it comes to procurement with CDBG funds, States are subject to different rules than Counties and Municipalities.</td>
</tr>
<tr>
<td>• States should have written policies. Below is the citation from 24 CFR 489(j): When procuring property or services to be paid for in whole or in part with CDBG funds, states must follow their procurement policies and procedures. The State shall establish written procurement policies and procedures for units of general local government based upon competition. Methods of procurement (e.g., sealed bids, sealed proposals, requests for proposals, etc.) are the responsibility of the State.</td>
</tr>
</tbody>
</table>

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

PROCUREMENT 101 BRIEF

CDBG-DR grants and subgrants 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 quickly to restore infrastructure, public services, and help private companies and citizens make repairs. However, grantees and subgrantees 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 principles 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 the state policy as well, where they exceed federal minimum requirements. The essence of a policy can be summarized as follows:

- The State may use its own financial requirements in one of three ways:
  - The State may use its own financial requirements (
    - The State may use its own financial requirements (at least one of the following):
      - The State may use its own financial requirements (at least one of the following):
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Citations to the Code of Federal Regulations in the Federal Register are cited in the following manner:

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</thead>
<tbody>
<tr>
<td>FR</td>
<td>Federal Register</td>
<td><a href="http://www.federalregister.gov">www.federalregister.gov</a></td>
</tr>
</tbody>
</table>

2 CFR §220.318

- **Title number**
- **Abbreviation for Code of Federal Regulations**
- **Symbol for the section; or use the word “part”**
- **Number of the part or section**
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
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
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)
Prohibitve Practices

• Contract Types
  o Prohibition on Cost Plus a Percentage of Cost (CPPC) Pricing 2 CFR 200.323
  o 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
Prohibitive Practices (continued)

• Prohibition on Practices that Restrict Full and Open Competition
  2 CFR 200.319

Examples of situations considered restrictive of competition:
  o Placing unreasonable requirements on firms in order for them to qualify
  o Requiring unnecessary experience and excessive bonding
  o Noncompetitive contracts to consultants that are on retainer contracts
  o Organizational conflicts of interest
  o Specifying a “brand name” product
  o 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)
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.

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
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

<table>
<thead>
<tr>
<th>Procurement Type</th>
<th>Cost Methodology</th>
<th>Solicitation Method</th>
<th>Applications</th>
<th>Dollar Thresholds if applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro-Purchases 2 CFR 200.320(a)</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 $3,500 for all other purchases</td>
</tr>
<tr>
<td>Small Purchase 2 CFR 200.320(b)</td>
<td>Price Analysis</td>
<td>Quotations, Submitted Bids</td>
<td>Produced Items, Single-task Service, Supplies</td>
<td>$150,000 or less for produced items, $150,000 or less for non-construction services</td>
</tr>
</tbody>
</table>
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</thead>
<tbody>
<tr>
<td>Sealed Bid</td>
<td></td>
<td></td>
<td>Construction Items</td>
<td>All construction contracts including less than $150,000</td>
</tr>
<tr>
<td>Formal Advertising</td>
<td></td>
<td></td>
<td>Produced or Designed Items</td>
<td>Produced or designed items over $150,000</td>
</tr>
<tr>
<td>2 CFR 200.320(c)</td>
<td></td>
<td></td>
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<tr>
<td>Competitive Proposals</td>
<td></td>
<td></td>
<td>Professional Services</td>
<td>Professional Services and/or Multi-task Services over $150,000</td>
</tr>
<tr>
<td>2 CFR 200.320(d)</td>
<td></td>
<td></td>
<td>Multi-task Services</td>
<td>Designed items over $150,000 when Sealed Bid is not appropriate</td>
</tr>
<tr>
<td></td>
<td>Price Analysis</td>
<td>Submitted Bids</td>
<td>Construction Items</td>
<td></td>
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<tr>
<th>Procurement Type</th>
<th>Cost Methodology Reasonableness</th>
<th>Solicitation Method</th>
<th>Applications</th>
<th>Dollar Thresholds if applicable</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>
</tr>
<tr>
<td>2 CFR 200.320(f)</td>
<td></td>
<td></td>
<td>Single-task Services</td>
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<td></td>
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<td></td>
<td>Designed Items</td>
<td></td>
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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