2 CFR 200.317 Procurement By States

In the HUD-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(g) takes precedence over Part 200. The regulation in 24 CFR 570.489(g) 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 alternative requirement by Federal Register Notice. The State CDBG regulations on procurement found at 24 CFR Part 570.489(g).

Analysis: 2 CFR 200.317

Previous Regulations/Circulars

- See 85.36(a). Program Administrative Reqs for States 24 CFR 570.489 is still required.

What it Means?

- A state will follow its own established policies and procedures, which may not be exactly the same as the Federal regulations.
- All other public jurisdictions, such as Counties and Municipalities, must follow the Federal procurement standards—unless the State specifically requires them to follow State procurement guidelines.

Keep in Mind

- When it comes to procurement with CDBG-DR funds, States are subject to different regulations than other governmental entities.
- States should have written policies. Below is the citation from 24 CFR 489(g)
  When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by 24 CFR 570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.330.
- CDBG program rules require that the State establish policies and procedures for full and open competition
- State must ensure that all purchase orders and contracts include clauses required by Federal statutes, executive orders and implementing regulations (24 CFR 570.489(g)).
- State must obtain certification from any transaction participant that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation (24 CFR 570.489(l)).

Resource List

Below is a quick listing of resources that are accessible, relevant and valuable. Icon ( ) denotes the most relevant resource at the Procurement 101 level.

CDBG-DR Resources	Links
CDBG-DR Overview	https://www.hudexchange.info/resources/documents/CDBG-Disaster-Recovery-Overview.pdf
Buying Right CDBG-DR and Procurement: A Guide to Recovery	https://www.hudexchange.info/resources/documents/Buying-Right-CDBG-DR-and-Procurement-A-Guide-to-Recovery.pdf
CDBG-DR Toolkit: Program Launch—Procurement and Contract Management	https://www.hudexchange.info/resources/documents/CDBG-DR-Contract-Management.pdf
Updates and Clarifications to Procurement Requirements for States	https://www.hudexchange.info/course-content/2017-cdbg-dr-updates-and-clarifications-to-procurement-requirements-for-states-at-2-cfr-200-webinar/2017-CDBG-and-CDBG-DR-States%20only-Updates-and-Clarifications-to-Procurement-Requirements-Webinar-Slides-2017-04-26.pdf
Sample Documents and Templates—Procurement and Contracting	• Example Document: Competitive Bids Procurement of Design Services by RFQ • Example Document for Procurement Using Competitive Bids: RFP for Professional Services • Sample Document: Contract Reporting Template • Sample Document: Cost Analysis • Sample Document: Procurement Checklist • Example Document: Procurement Using a Sealed Bid Solicitation for Construction Services
Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR 200)	https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards
Additional Transition and Implementation Guidance on 2 CFR 200	https://www.hudexchange.info/resource/4990/notice-cpd-16-04-additional-transition-and-implementation-guidance-for-recipients-of-community-planning-and-development-cpd-funds-for-2-cfr-part-200-uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-award/
Federal Register regarding various regulations that have changed for HUD programs	https://www.gpo.gov/fdsys/pkg/FR-2015-12-07/pdf/2015-29692.pdf
CDBG-DR Subrecipient and Recordkeeping	https://www.hudexchange.info/course-content/2016-cdbg-dr-subrecipient-management-and-recordkeeping-webinar/2016-CDBG-DR-Subrecipient-Management-and-Recordkeeping-Webinar-Slides-2016-05-16.pdf

Pertinent Citations

- 24 CFR §570.489(g)
- 2 CFR §200.317 *Procurements by State*
- 2 CFR §200.318 *General Procurement Standards*
- 2 CFR §200.319 *Competition*
- 2 CFR §200.320 *Methods of Procurement to be Followed*
- 2 CFR §200.321 *Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms*
- 2 CFR §200.322 *Procurement of Recovered Materials*
- 2 CFR §200.323 *Contract Cost and Price*
- 2 CFR §200.324 *Federal Awarding Agency or Pass-through Entity Review*
- 2 CFR §200.325 *Bonding Requirements*
- 2 CFR §200.326 *Contract Provisions*
- 24 CFR §570.489(h) *Conflict of Interest*
- 2 CFR Parts 180 and 2424 *Debarment*

Key Point

Citations to the Code of Federal Regulations in the Federal Register are cited with the title number, the abbreviation CFR, the word "part" or the symbol "§" for section, and the number of the part or section.

As in "2 CFR part 200.318" or "2 CFR §220.318"

Glossary

HUD has many existing resources in place to help understand CDBG-DR laws, regulations and practices. Below is a quick listing of resources that are accessible, relevant, and valuable.

Acceptance	The act of accepting by an authorized representative; an indication of a willingness to pay; the assumption of a legal obligation by a party to the terms and conditions of a contract.
Acquisition	The act of acquiring goods and services (including construction) for the use of a governmental activity through purchase, rent, or lease. Includes the establishment of needs, description of requirements, selection of procurement method, selection of sources, solicitation of procurement, solicitation for offers, award of contract, financing, contraction administration, and related functions.
Agreement	A duly executed and legally binding contract; the act of agreeing.
Amendment/Change Order	A written modification to a contract or purchase order or other agreements.
Best and Final Offer (BAFO)	Term used in bids to indicate that no further negotiation on the amount or terms is possible. BAFO is issued often in response to the request a principal (customer) sends to those contractors or suppliers whose bids are within a close range of one another.

Best Value	A result intended in the acquisition of all goods and services. Price must be one of the evaluation criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to environmental considerations, quality, and vendor performance.
Competitive Bids	The competitive bid process invites the submission of proposals from applicants through a Request for Proposals
Contract	Any written instrument or electronic document containing the elements of offer, acceptance, and consideration to which an agency is a party.
Contract Administration	The management of all actions after the award of a contract that must be taken to assure compliance with the contract; e.g., timely delivery, acceptance, payment, closing contract, etc.
Contractor	A person who agrees to furnish goods or services for a certain price; may be a prime contractor or subcontractor.
Cost Analysis	Cost analysis is the evaluation of the separate elements (e.g., labor, materials, profit, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirements and ultimately, reasonable. Cost Analysis should apply to both new contracts and contract modifications or change orders.
Debarment	The disqualification of a person to receive invitations for bids or requests for proposals, or the award of a contract by a government body, for a specified time commensurate with the seriousness of the offense, the failure, or the inadequacy of performance.
Default	Failure by a party to a contract to comply with contractual requirements.
Design Specification	A specification setting forth the required characteristics to be considered for award of contract, including sufficient detail to show how the product is to be manufactured.
Energy Star ®	A federal standard applied to office equipment for the purpose of rating the energy efficiency of the equipment. Energy Star ® computers, monitors, and printers save energy by powering down and going to "sleep" when not in use, resulting in a reduction in electrical bills and pollution levels.
Evaluation of Responses	The examination of responses after opening to determine the vendor's responsibility, responsiveness to requirements, and other characteristics of the solicitation relating to the award.
Joint Venture	The temporary association of two or more businesses to secure and fulfill a procurement bid award.
Lead Time	The time that it would take a supplier to deliver goods after receipt of order.

Life Cycle Costing	A procurement evaluation technique which determines the total cost of acquisition, operation, maintaining and disposal of the items acquired; the lowest ownership cost during the time the item is in use.
Line Item	An item of supply or service specified in a solicitation for which the vendor must specify a separate price.
Liquidated Damages	A specific sum of money, agreed to as part of a contract to be paid by one party to the other in the event of a breach of contract in lieu of actual damages, unless otherwise provided by law.
List Price	The price of an article published in a catalog, advertisement or printed list from which discounts, if any, may be subtracted.
Micro-Purchases	Micro-purchases are acquisitions of products or services where the aggregate acquisition price does not exceed the micro purchase threshold. Micro-purchase is defined at 2 CFR 200.67 where
NAICS (North American Industry Classification System) Code [formerly known as SIC (Standard Industrial Classification) Code]	Classification of business established by type of activity for the purpose of facilitating the collection, tabulation, presentation, and analysis of data collected by various agencies of the United States government, state agencies, trade associations, and private research organizations for promoting uniformity and comparability in the presentation of statistical data relating to those establishments and their fields of endeavor.
No Bid	A response to a solicitation for bids stating that respondent does not wish to submit an offer. It usually operates as a procedure consideration to prevent suspension from the vendors list for failure to submit a response.
Non-Competitive Bids	Procurement through non-competitive proposals occurs when the Grantee solicits proposals from only one source.
Option to Extend/Renew	A provision (or exercise of a provision) which allows a continuance of the contract for an additional time according to permissible contractual conditions.
Partial Repayment	The payment authorized in a contract upon delivery of one or more units called for under the contract or upon completion of one or more distinct items of service called for thereunder.
Performance Specification	A specification setting forth performance requirements determined necessary for the item involved to perform and last as required.
Preference	An advantage in consideration for award for a contract granted to a vendor by reason of the vendor's residence, business location, or business classifications (e.g., minority, small business).
Prequalification of Vendors	The screening of potential vendors in which such factors as financial capability, reputation and management are considered when developing a

	list of qualified vendors. See Vendors List, Qualified Vendor/Responsible Vendor.
Price	The amount of money that will purchase a definite weight or other measure of a commodity.
Price Analysis	Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., total sum) without analyzing any of the separate cost elements.
Procurement	The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, store keeping, and salvage and disposal operations.
Proprietary	The only items that can perform a function and satisfy a need. This should not be confused with "single source." An item can be proprietary and yet available from more than one source. For example, if you need a camera lens for a Nikon camera, the only lens that will fit is a Nikon lens, thus, this lens is "proprietary." However, the Nikon lens is available from more than one source, thus, it is not single source.
Purchase Manual	A document that stipulates rules and prescribes procedures for purchasing with suppliers and other departments.
Purchase Order	The signed written acceptance of the offer from the vendor. A purchase order serves as the legal and binding contract between both parties.
Qualified Vendor/Responsible Vendor	A vendor determined by a buying organization to meet minimum set standards of business competence, reputation, financial ability and product quality for placement on the vendor list.
Qualified Products List (QPL)	A list of products that, because of the length of time required for test and evaluation, are tested in advance of procurement to determine which suppliers comply with the specification requirements. Also referred to as an "approved brands list."
Quantity Discount	A reduction in the unit price offered for large volume contracts.
Request for Bid (RFB)	A solicitation in which the terms, conditions, and specifications are described and responses are not subject to negotiation.
Request for Proposal (RFP)	A solicitation in which it is not advantageous to set forth all the actual, detailed requirements at the time of solicitation and responses are subject to negotiation. Price must be a factor in the award but not the sole factor.
Requirement	Materials, personnel or services needed for a specific period of time.
Requirements Contract	A form or contract that is used when the total long-term quantity required cannot be definitely fixed, but can be stated as an estimate or within maximum and minimum limits with deliveries on demand.

Requisition	An internal document that a functional department (stores, maintenance, production, etc.) sends to the purchasing department containing details of materials to meet its needs, replenish stocks or obtain materials for specific jobs or contracts.
Responsible Bidder	A bidder whose reputation, past performance, and business and financial capabilities are such that the bidder would be judged by an appropriate authority as capable of satisfying an organization's needs for a specific contract.
Responsive Bidder	A bidder whose bid does not vary from the specifications and terms set out in the invitation for bids.
Restrictive Specifications	Specifications that unnecessarily limit competition by eliminating items capable of satisfactorily meeting actual needs. See Performance Specification.
RFP or RFB Conference	A meeting arranged by a procurement office to help potential bidders understand the requirements of an RFB or an RFP.
Sealed Bid	In a sealed bid process, the Grantee publishes a detailed scope of work, inviting qualified candidates to submit bids that are then publicly opened and announced with the award going to the lowest priced, responsible bidder. This is the method most often used for construction services.
Services	Unless otherwise indicated, both professional or technical services and service performed under a service contract.
Single Source	An acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service or construction item.
Small Purchases	Small purchases are acquisitions of products or services where the aggregate acquisition price does not exceed the Simplified Acquisition Threshold.
Solicitation	The process used to communicate procurement requirements and to request responses from interested vendors. A solicitation may be, but is not limited to a request for bid and request for proposal.
Terms and Conditions	A phrase generally applied to the rules under which all bids must be submitted and the stipulations included in most purchase contracts; often published by the purchasing authorities for the information of all potential vendors.
Unit Price	The price of a selected unit of a good or service (e.g., pound, labor hours, etc.).
Vendors List	A list of names and addresses of suppliers from whom bids, proposals and quotations might be expected. The list, maintained by the purchasing office, should include all suppliers who have expressed interest in doing business with the government.