



# Implementation Manual

## Chapter 5–Procurement

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TEXAS GENERAL LAND OFFICE  
**Community Development and  
Revitalization Department**

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The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

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# CHAPTER 5—PROCUREMENT

## 5.1 Introduction

This chapter establishes the standards and guidelines for the procurement of supplies, equipment, construction, engineering, grant administration, architectural, consulting, and other professional services for CDBG-DR or CDBG-MIT programs. The Texas General Land Office Community Development and Revitalization (GLO-CDR) department has adopted 2 CFR §200.317 as it relates to the administration of CDBG-DR and CDBG-MIT programs. As such, CDBG-DR and CDBG-MIT subrecipients are required to follow the federal procurement requirements found in 2 CFR §200.318 through §200.327.

The following standards and guidelines are being furnished to ensure subrecipients of CDBG-DR or CDBG-MIT funds procure materials and services in an efficient and economical manner in compliance with the applicable provisions of federal law, state laws, and executive orders.

The foregoing standards do not relieve CDBG-DR or CDBG-MIT subrecipients of any contractual responsibilities under their contracts or local, state, or federal law. Subrecipients are responsible, in accordance with good administrative practice and sound business judgement for the settlement of all contractual and administrative issues arising out of procurement entered in support of the grant.

GLO-CDR staff will relay the information contained herein to subrecipients via the GLO-CDR website, <https://www.glo.texas.gov/disaster-recovery>, through trainings and checklists, and during on-site monitoring and reviews (see [Resources](#)—Resource 5.1 for a link to GLO-CDR’s Procurement and Contracting Guidance). Additional resources may be found on the HUD Exchange website, [www.hudexchange.info](http://www.hudexchange.info), including example procurement documents and checklists. These samples can assist subrecipients in complying with federal regulations; however, subrecipients should review all procurement documents and procedures to ensure compliance with local and state laws and regulations. Refer also to the State of Texas Procurement and Contract Management Guide (see [Resources](#)—Resource 5.2).

## 5.2 Local Procurement Policies

Before securing contract services, subrecipients should determine whether their procurement policies and procedures comply with all federal requirements contained in 2 CFR §200.318-.327. If the subrecipient intends to use federal funds to pay for goods or services and their procurement policy does not contain all federal requirements, the policy must be amended accordingly. Inadequate policies and procedures do not eliminate the subrecipient’s responsibility to comply with all federal, state, and local laws regarding purchases of goods or services.

Each subrecipient must have a written and adopted procurement policy that addresses, at a minimum, the following:

1. **Oversight.**<sup>1</sup> Subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. **Standards of Conduct.**<sup>2</sup> Every subrecipient must maintain written procedures covering conflicts of interest governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award, and administration of contracts, the award of CDBG-DR or CDBG-MIT assistance, or the management of federally assisted or purchased property. The subrecipient must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489 and Texas Local Government Code Chapter 171.
  - For the procurement of goods and services, no employee, officer, or agent of the subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in a tangible personal benefit from a firm considered for a vendor contract. (24 CFR 570.489(g), Uniform Grant Management Standards (UGMS) of the Texas Comptroller, 2 CFR §200.318(c)(1)).
  - The officers, employees, or agents of the subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
  - The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the subrecipient.
3. **Avoidance of Unnecessary or Duplicative Items.**<sup>3</sup> Subrecipients' procurement procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
4. **Value Engineering Clauses.**<sup>4</sup> Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
5. **Awarding to Responsible Contractors.**<sup>5</sup> Subrecipients must award contracts only to responsible contractors capable of performing successfully under the terms and conditions of a proposed procurement contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
6. **Record Keeping.** Subrecipients must maintain records sufficient to detail the history of each procurement transaction. These records shall include, but are not limited to, the following:
  - Rationale for the method of procurement;

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<sup>1</sup> 2 CFR §200.318(b)

<sup>2</sup> 2 CFR §200.318(c)(1)

<sup>3</sup> 2 CFR §200.318(d)

<sup>4</sup> 2 CFR §200.318(g)

<sup>5</sup> 2 CFR §200.318(h)

- Selection of contract type;
  - Contractor selection or rejection; and
  - The basis for the contract price.<sup>6</sup>
7. **Time and Materials Contracts.** Subrecipients may only use a time and materials type contract after a determination is made that no other contract is suitable, and if the contract includes a ceiling price, the contractor exceeds it at its own risk. Time and materials type contracts are the sum of:
- The actual cost of materials; and
  - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.<sup>7</sup>
8. **Dispute Resolution.** Subrecipients alone must be responsible, in accordance with good administrative practice and sound business judgment, for settling all contractual and administrative issues arising from their procurement's transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve subrecipients of any contractual responsibilities under their contracts.<sup>8</sup>

### 5.3 Local Procurement Procedures

Subrecipients must have written procedures for procurement transactions that ensure all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- Identify all requirements that the offerors must fulfill;
- Identify all other factors to be used in evaluating bids or proposals; and<sup>9</sup>
- Are conducted in a manner providing full and open competition;<sup>10</sup>
  - In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, 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.
  - Some situations considered to be restrictive of competition include, but are not limited to, the following:
    - Placing unreasonable requirements on firms in order for them to qualify to do business.
    - Requiring unnecessary experience and excessive bonding.
    - Noncompetitive pricing practices between firms or between affiliated companies.

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<sup>6</sup> 2 CFR §200.318(i)

<sup>7</sup> 2 CFR §200.318(j)

<sup>8</sup> 2 CFR §200.318(k)

<sup>9</sup> 2 CFR §200.319(d)

<sup>10</sup> 2 CFR §200.319(a)

- Noncompetitive contracts to consultants that are on retainer contracts.
- Organizational conflicts of interest.
- Specifying only ‘brand name’ products instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement.
- Any arbitrary action in the procurement process.<sup>11</sup>

When using prequalified lists, subrecipients must ensure that all lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, subrecipients must not preclude potential bidders from qualifying during the solicitation period.<sup>12</sup>

## 5.4 Price and Cost Analysis

For all procurement actions exceeding the Federal Simplified Acquisition Threshold, including change orders or contract modifications, subrecipients must perform a cost or price analysis as described in 2 CFR §200.324. If the local or state acquisition threshold is more restrictive, use the stricter one. Note that subrecipients must consider price reasonableness for micro-purchases as well as small purchases (see [Section 5.7](#) below).

### 5.4.1 Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services without evaluating separate cost elements and should be documented in the procurement file. Price analysis techniques include comparing proposed prices received in response to the solicitation, historical prices for the same or similar items, or comparing proposed prices with prices obtained through market research for the same or similar items.<sup>13</sup>

Subrecipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison. When comparing prices, it must be determined if the goods or services are comparable. It is the subrecipient’s responsibility to determine that the price is fair and reasonable.

### 5.4.2 Cost Analysis

Subrecipients will use this process to determine whether proposed costs are allowable, reasonable, and allocable, as described in 2 CFR §200.403-405. Within a reasonable time period prior to receiving bids or proposals, subrecipients must prepare an independent cost estimate (ICE) for the goods or services to be procured. The ICE should include sufficient details to enable

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<sup>11</sup> 2 CFR §200.319(b)

<sup>12</sup> 2 CFR §200.319(e)

<sup>13</sup> Federal Acquisition Regulation 15.404-1 (b) (2)

the subrecipient to appropriately estimate the costs and to be able to perform a thorough comparison of the estimates in the ICE to the proposals received.

When conducting a cost analysis, subrecipients must review and evaluate the separate elements of cost and negotiate profit or fee in a received proposal.<sup>14</sup> It is the subrecipient's responsibility to determine that the cost is fair and reasonable.

A cost analysis is required when price competition does not exist. The following are examples of when cost analysis is used:

- The competitive proposal method is used.
- The sole source procurement method is used.
- Only one bid is received during a sealed bid procurement.
- A change order or contract modification is requested that changes the price or total estimated cost (either upwards or downwards).

#### *5.4.3 Conducting a price or cost analysis*

Subrecipients should document the following in their analysis:

- Check the accuracy of the prices submitted.
- Evaluate the necessity and allowability of the proposed price or cost items.
- Evaluate the price or separate elements of cost.
- Review proposal for potential cost overruns, taking into consideration the vendor's
  - past performance.
- Compare proposed prices or costs to the subrecipient's independent cost estimate.
- Compare proposed prices or costs to previous estimates or actual costs incurred for similar work.

#### *5.4.4 Profit Negotiation*

As of October 1, 2024, profit negotiation in 2 CFR 200.324(b) was removed and is no longer required. For procurement before October 1, 2024: Subrecipients must negotiate profit 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.<sup>15</sup> All of the following criteria should be considered when negotiating profit:

- Complexity of the work to be performed;
- Amount of risk the contractor may be exposed to (performance and/or cost);
- Contractor's investment and resources dedicated to performing the contract (labor, oversight, etc.);
- Use of subcontractors by the prime contractor and the nature of the work to be performed;
- Quality of the contractor's past performance for similar work; and

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<sup>14</sup> Federal Acquisition Regulation 15.404-1 (c) (1)

<sup>15</sup> 2 CFR §200.324(b)

- Industry profit rates in the surrounding area for similar work.

Subrecipients are responsible for maintaining records and any documentation used to support the profit negotiation.

## 5.5 Contracting with Small and Minority Businesses, Women's Business Enterprises, Veteran Owned Business, and Labor Surplus Area Firms

Subrecipients should ensure, when possible, that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered.<sup>16</sup>

Furthermore, subrecipients need to recognize that only including The Texas Veteran Heroes United in Business (VetHUB) program does not fully address the federal provisions concerning small businesses or labor surplus area firms, and additional action may be necessary to ensure consideration of all specified businesses. In the event that state and federal requirements conflict, the federal requirements take priority.

Such consideration, as set forth in 2 CFR §200.321(b), means the following:

- Including these business types on solicitation lists;
- Soliciting these business types whenever they are deemed eligible as potential sources;
- Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- Establishing delivery schedules that encourage participation by these business types;
- Utilizing, as appropriate, organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring a contractor under a Federal award to apply this section to subcontracts.

## 5.6 Suspension and Debarment

Subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR Part 180. These regulations restrict making awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.<sup>17</sup>

Subrecipients must ensure, prior to contract award, that all contractors receiving CDBG-DR or CDBG-MIT funds have met all the eligibility requirements outlined in state and federal law. At a minimum, the following steps must be taken to ensure contractor eligibility for all services procured.

- **Contractors:** All contractors, including professional consulting and engineering firms, should be registered, maintain active status, not be included in the Texas Comptroller's

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<sup>16</sup> 2 CFR §200.321(a)

<sup>17</sup> 2 CFR §200.214

debarred vendor list, and are cleared via a search of the Federal System of Award Management (SAM) to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: <https://sam.gov/search/>

- **Subcontractors:** Subrecipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, verifying the subcontract is not debarred on SAM portal or the Texas Comptroller's debarred vendor list, and meet state licensing requirements.

It should be noted that if any of the above-listed parties are deemed ineligible to receive CDBG-DR and/or CDBG-MIT funds after awarding the contract, the contract will be immediately terminated. The matter must be reported to the GLO-CDR for further action (via email).

## 5.7 Methods of Procurement

The methods of procurement should follow the more stringent of local, state, or federal requirements. If it appears that the requirements contradict federal procurement standards, subrecipients may request Technical Assistance to determine the best procurement method. Below are the minimum requirements that subrecipients must utilize:

### *Micro-Purchases*

The micro-purchase method is used for the acquisition of supplies or services that do not exceed the micro-purchase threshold and must be distributed equitably among qualified suppliers. In most instances under CDBG-DR and CDBG-MIT, the micro-purchase threshold is \$10,000 (prior to October 1, 2025) and \$15,000 (after October 1, 2025), except for:

- Procurement of construction services subject to Davis Bacon requirements, the threshold is \$2,000.
- Procurement of services subject to Service Contract Labor Standards, the threshold is \$2,500.

The 2021 Winter Disaster Grant was awarded to the state after October 1, 2025. For it and any subsequent grants the Micro-Purchase Threshold is \$15,000 subject to the above two exceptions.

Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable and maintains documentation to support its conclusion.<sup>18</sup>

### *Small Purchases*

The small purchase method is used for the acquisition of supplies or services that exceed the micro-purchase threshold but are less than or equal to the small purchase threshold. Small

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<sup>18</sup> 2 CFR 200.320(a)(1)

purchase procedures are relatively informal and do not require a formal solicitation for securing services, supplies, or other property.<sup>19</sup>

The federal small purchase threshold is \$350,000. For local governments, the State small purchase threshold is \$50,000. Since these grants and programs are funded with federal money, but we are also governed by state rules, we must follow the stricter of the two regulations. Subrecipients must use the stricter of the two regulations. Small purchase procedures must not be used in procurements anticipated to exceed \$50,000.

If small purchase procedures are used, the subrecipient must attempt to obtain price or rate quotations from at least 3 qualified sources.<sup>20</sup> Documentation of the rate quotations must be maintained for record-keeping requirements.

### *Sealed Bids*

Sealed bids are publicly solicited through an invitation and result in a firm fixed price contract (lump sum or unit price). The contract is awarded to the bid responsible, whose bid conforms with all the terms and conditions of the invitation for bids and is the lowest price. This is the preferred method for construction contracts.<sup>21</sup>

### *Competitive Proposals*

The competitive proposals procurement technique is normally used when either a fixed price or cost-reimbursement type contract is awarded and when conditions are not appropriate for using sealed bids. A Request for Proposal (RFP) is used when qualifications and price are used to evaluate proposals and is the preferred method for administrative services and environmental assessments. Proposals must be solicited from multiple qualified entities. A Request for Qualification (RFQ) is used to procure architectural or engineering professional services where qualifications are used to evaluate proposals and price is not used as a selection factor.<sup>22</sup>

### *Noncompetitive Procurements*

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- The aggregate amount of the procurement does not exceed the micro-purchase threshold.
- The procurement transaction can only be fulfilled by a single source;

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<sup>19</sup> 2 CFR 200.320(a)(2)

<sup>20</sup> Texas Government Code §2155.132(h): A state agency making a purchase under this section for which competitive bidding is required must attempt to obtain at least three competitive bids from sources listed on the master bidders list that normally offer for sale the goods being purchased.

<sup>21</sup> 2 CFR §200.320(b)(1)

<sup>22</sup> 2 CFR §200.320(b)(2)

- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of a number of sources, the competition is determined to be inadequate.<sup>23</sup>

The subrecipient must document the circumstances that the procurement transaction met to use the noncompetitive procurement method and the how the subrecipient ensured compliance with the requirements.

GLO-CDR published a Noncompetitive Procurement Checklist to guide subrecipients in documenting the efforts taken to procure goods and services using the noncompetitive procurement. While the checklist is intended as a general tool, the circumstances of some procurements may require additional support or documentation.

The following table outlines the five procurement methods used to procure materials, supplies, construction, and services.

| <b>Procurement Type</b>                | <b>Cost Reasonableness</b>      | <b>Contract Type</b>                                  | <b>Solicitation Method</b>      | <b>Applications</b>                                            |
|----------------------------------------|---------------------------------|-------------------------------------------------------|---------------------------------|----------------------------------------------------------------|
| <b>Micro-Purchase</b>                  | Price Analysis                  | Purchase Order<br>Fixed Price                         | No solicitation required        | Supplies<br>Produced items<br>Single task service              |
| <b>Small Purchase</b>                  | Price Analysis                  | Purchase Order<br>Fixed Price                         | Quotations<br>Submitted<br>Bids | Supplies<br>Produced items<br>Single task service              |
| <b>Sealed Bid (formal advertising)</b> | Price Analysis<br>Cost Analysis | Fixed Price                                           | Submitted<br>Bids               | Construction items<br>Produced or designed items               |
| <b>Competitive Proposals</b>           | Price Analysis<br>Cost Analysis | Cost Reimbursement<br>Fixed Price<br>Time & Materials | Submitted<br>Proposals          | Professional services<br>Multi-task services<br>Designed items |
| <b>Noncompetitive Proposals</b>        | Cost Analysis                   | Cost Reimbursement<br>Fixed Price                     | Submitted<br>Proposals          | Produced items<br>Single task service<br>Professional services |

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<sup>23</sup> 2 CFR §200.320(c)

|  |  |                  |  |                                       |
|--|--|------------------|--|---------------------------------------|
|  |  | Time & Materials |  | Multi-task services<br>Designed Items |
|--|--|------------------|--|---------------------------------------|

## 5.8 Micro-Purchase Procedures

Prior to utilizing the Micro-Purchase method of procurement, subrecipients should plan and document the number of products or services required. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the micro-purchase threshold (see [Section 5.7](#) above). For micro-purchases of construction services in excess of \$2,000, subrecipients must adhere to the Davis-Bacon and Related Acts (see Chapter 9).

To the extent practicable, subrecipients must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable by conducting a price analysis (see [Section 5.4](#)). Prior to issuing a purchase order under this method, subrecipients must verify that the vendor is not debarred in the System for Award Management (see [Section 5.6](#) above).

## 5.9 Small Purchase Procedures

Prior to utilizing the Small Purchase method of procurement, subrecipients should consider the aggregate cost of the goods or services. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the small purchase threshold (see [Section 5.7](#) above).

Subrecipients cannot use the small purchase procurement method to make separate, sequential, or component purchases of goods or services with the intent of avoiding the competitive bidding and competitive proposal requirements.<sup>24</sup>

When seeking quotes, subrecipients must clearly explain to all vendors providing quotations that the information provided is being sought for informational purposes only and the request for quotation does not constitute a formal solicitation. Extra care must be given to avoid giving a vendor any competitive advantage in a future procurement initiative.

### *Step 1: Comply with Davis-Bacon Act requirements, if applicable*

Subrecipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those rates into the construction procurement (see Chapter 9).

### *Step 2: Contact a minimum of three (3) vendors.*

Subrecipients must use the Small Purchase Procurement Record ([Infrastructure Forms | Texas General Land Office](#)) to document quotes received. Quotations may be requested via telephone, fax, email, mail, or any other reasonable method.

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<sup>24</sup> Local Government Code, Sec. 262.023 (c) and Sec. 252.062

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus area firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

### *Step 3: Award the contract.*

Subrecipients should conduct a price analysis and award to the lowest-priced quote (see [Section 5.4](#) above). If the subrecipient does not award the contract to the lowest-cost respondent, the rationale must be documented and comply with federal, state, and local regulations.

Subrecipients must verify that the vendor is not debarred under the System for Award Management or is in the Texas Comptroller's Debarred Vendor List. (see [Section 5.6](#) above).

See [Section 5.13.5](#) for details on change orders.

### *Step 4: Execute the contract.*

When using Small Purchase Procurement for contracts, subrecipients must submit the Small Purchase Procurement Record. Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

## **5.10 Sealed Bid Procedures**

Procurements for materials, equipment, and construction services with a total cost over the small purchase threshold (see [Section 5.7](#) above) must formally advertise for sealed bids. Procurement by sealed bids is the preferred method for procuring materials, equipment, and construction services if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- 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.

**Note:** Sealed bid procurement can be conducted electronically. The federal and state guidance and laws that must be followed are detailed in the General Land Office document titled "E-Bid Procurement Guidance." ([Procurement & Contract Guidelines | Texas General Land Office](#))

### *Step 1: Creation of Sealed Bid Packages*

Subrecipients must create a bid package, usually written by an architect or engineer and based on prepared plans or working drawings, that provides a clear and accurate description of the technical requirements for materials, products, and/or services to be provided on the project. This package must:

- Be sealed by an architect or engineer registered in the State of Texas and if the project falls under the jurisdiction of another state agency, approval is required prior to construction.

- For fire stations, garages, and/or buildings that will be accessible to the public once constructed, a certification that applicable standards of accessibility for individuals with disabilities have been or will be satisfied must be executed and co-signed by a local jurisdictional official and filed in the contract documents.
- Include details for all properly acquired lands, rights-of-way, and/or easements necessary for carrying out the project.
- Contain processes and procedures in accordance with the provisions of the Uniform Relocation Act for the acquisition of land occurring during the project.
- Contain all forms and contract provisions applicable to the project and required by federal and state laws and regulations.

The base bid should include all components of the approved project and should not include any items that were not included in the approved application, or which have not received subsequent approval.

**Note:** For fixed-price contracts with unit cost pricing, the bid specifications should delineate some type of item, estimated quality, unit price, and total cost.

### *Step 2: Comply with Davis-Bacon Act Requirements*

Subrecipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those rates into the construction procurement (see Chapter 9).

### *Step 3: Advertise for Bids*

The invitation for bids must be publicly advertised, and bids shall be solicited from an adequate number of qualified sources with sufficient time provided prior to the date set for opening the bids. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services so the bidder can properly respond.

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus area firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

### *Step 4: Public Opening of Sealed Bid Packages*

All bids will be publicly opened at the time and place prescribed in the invitation for bids. All sealed bid packages must be opened in accordance with the following standards in addition to any requirements imposed by local, state, and federal law:

- All bids shall be opened and read aloud during the bid opening, and the apparent low bidder should be determined during this time;
- Bids shall undergo a review for both technical and legal responsiveness;
- Bidders must be evaluated as having the capacity to furnish the products and/or services required; and
- Minutes of the bid opening, along with a tabulation of bids, shall be placed in the contract file.

Subrecipients should take action within 45 days of the bid opening, or as otherwise specified in the bid documents, to either award a contract to the lowest responsible bidder or reject any and all bids for just cause. Any or all bids may be rejected if there is a sound, documented reason.

If only one bid is received, the bid should be compared with an in-house estimate of the cost and prices paid for the same or substantially similar item(s) in the past. Information from the marketplace should be gathered if it was not done so when developing the estimate. If the sealed bid is cancelled and negotiations proceed with the single bidder, the subrecipient must document the rationale it used to determine that competition was not adequate and whether it performed any additional or direct solicitations to prospective bidders. In addition, a complete cost breakdown must be obtained, and a cost analysis performed. If the bidder refuses to comply, bids must be resolicited. All rationale for decisions must be documented.

If accepted, the subrecipient and the lowest responsible bidder may, by mutual written consent, agree to extend the award deadline by one or more extensions of 30 calendar days. Any final contracts awarded must be done so in compliance with the federal wage decision (See Labor Chapter 9 for details). Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

### *Step 5: Award the Contract*

A firm, fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in the invitation for bid documents, factors such as discounts, transportation costs, and life-cycle costs shall be considered in determining which bid is lowest. Payment discounts will be used only to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

Subrecipients must verify that the vendor is not debarred under the Texas Comptroller Debarred Vendor List (<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>) or the System for Award Management (Sam.gov) prior to awarding a contract (see [Section 5.6](#) above).

### **Procedures for Bids that Exceed Cost Estimates**

In some instances, the lowest bid received will exceed the amount of funds estimated for a particular project. If this occurs, the subrecipient shall determine the best course of action in consideration of the following options:

- Reject all bids received and re-advertise the project.
- Revise or reduce specifications and re-advertise the project after scope changes are approved by GLO-CDR via a contract change request.
- Reallocate funds to cover the overage.
- Seek other funding sources, such as local funds, to cover the overage.
- Enter into a legally binding contract with the lowest bidder for the amount of the bid presented and, subsequently, execute a change order\* to bring the project cost within the limits presented by the allocated funds.

\*A change order that alters the approved scope of work will require submission of a contract change order request. All changes resulting from bids that exceed cost estimates must be submitted to GLO-CDR within 30 days of the award. It is strongly advised that the subrecipient thoroughly analyzes how exercising this option would affect the other bidders prior to awarding the contract. See [Section 5.13.5](#) for details on change orders.

## *Step 6: Execute the Contract*

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

### **5.11 Competitive Proposal Procedures**

Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

#### *5.11.1 Request for Proposals (“RFPs”)*

RFPs are used to procure professional services for project delivery, such as grant administration and environmental services. This does not include architectural and engineering (“A/E”) professional services where the price negotiation occurs.

#### *5.11.2 Request for Qualifications (“RFQs”)*

RFQs are used to procure professional services such as engineering or architectural firms. RFQs use a competitive negotiation method. The selection is made based upon the competitor’s qualifications, subject to negotiation of fair and reasonable compensation.

This 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 provided by A/E firms that are a potential source to perform the proposed effort. RFQs cannot be used to procure project management or construction management services.

All A/E contracting fees, even those provided for under either a fixed-price contract or a cost reimbursement contract, must be deemed reasonable, justifiable, and below the applicable GLO-CDR cap. If, after a project has been funded, the project scope changes, a contract change request must be submitted for consideration by GLO-CDR. Changes to the project’s scope may impact the service provider’s fees as established by the applicable fee caps and the total construction amount.

The provision of funds for A/E services is entirely contingent upon the amount of funds deemed allowable by GLO-CDR. Firms will not be compensated from the applicable CDBG-DR and/or CDBG-MIT program in the event a project is not funded.

### *5.11.3 Conducting an RFP/RFQ*

#### **Step 1: Develop the Request for Proposals (RFP)/Request for Qualifications (RFQ) package**

The RFP/RFQ should include a clear and accurate description of the technical requirements for the material, product, or service to be procured. At a minimum, the RFP/RFQ package should include the following:

- Description of subrecipient's requirements and the scope of services;
- Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance;
- Detailed instructions on proposal requirements;
- Deadline for submission; and
- Anticipated terms and conditions that will apply to a contract awarded under the solicitation.
  - A solicitation may authorize offerors to propose alternative terms and conditions.
  - When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement.

#### **Step 2: Advertise the RFP/RFQ**

Requests for proposals/requests for qualifications must be publicized and identify all evaluation factors and their relative importance. Subrecipients should allow sufficient time between the solicitation date and the proposal deadline. Any response to publicized requests for proposals must be considered to the maximum extent practical.

Proposals must be solicited from multiple qualified sources. Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus area firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

#### **Step 3: Evaluate and rate the proposals**

Subrecipients must have a written method for conducting technical evaluations of received proposals and for making selections. Proposals received in response to RFPs and/or RFQs are typically reviewed in accordance with one of the following processes:

- **Competitive Point Range.** In using this review process, the subrecipient shall establish a predetermined range of points for proposals that would be considered adequate for qualifying a respondent for a particular solicitation. All respondents whose proposals or qualification statements score within that range would be invited to an oral interview and asked to submit a best-and-final offer. The proposals would then be re-evaluated, and the highest-scoring firm would be selected.
- **Highest Point Earner.** In using this review process, the subrecipient shall evaluate all proposals or qualification statements in accordance with predetermined selection criteria and award the contract to the overall highest scoring firm.

If only one proposal or qualification statement is received, the subrecipient must determine whether to resolicit the RFP/RFQ. If the RFP/RFQ is cancelled and negotiations proceed with the single

respondent, the subrecipient must document the rationale it used to determine that competition was not adequate and whether it performed any addition or direct solicitations to prospective respondents.

For counties, municipalities, and other public entities, the local governing body has the final authority to award contracts and may select another respondent if the minutes of the local governing body meeting include justification for the selection. Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

#### **Step 4: Award the contract**

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the subrecipient, with price and other factors considered (see [Section 5.4](#) above).

Subrecipients must also verify that the vendor is not debarred under the System for Award Management prior to awarding the contract (see [Section 5.6](#) above).

See [Section 5.13.5](#) for details on change orders.

#### **Step 5: Execute the Contract**

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.<sup>5.12</sup> Noncompetitive Procurement Procedures

Subrecipients MUST ensure compliance with 2 CFR 200.320(c) prior to using this procurement method. A Self-Certification of Noncompetitive Procurement must be completed for each applicable procurement and maintained by the subrecipient for record-keeping requirements.

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold;
- The procurement transaction can only be fulfilled by a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of a number of sources, competition is determined inadequate.

Subrecipients must conduct a cost analysis to determine if proposed costs are allowable, reasonable, and allocable (see [Section 5.4](#) above). Subrecipients must also verify that the vendor is not debarred under the System for Award Management (see [Section 5.6](#) above).

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-

CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

## 5.13 Contracting

### 5.13.1 Types of Contracts

**Purchase Order.** Purchase orders are a form of contract utilized for the purchase of supplies, single task services, and produced items typically procured through the small purchase method. A Purchase Order should contain, at a minimum, the following:

- Agency name and address;
- Agency contract or Purchase Order number;
- Date of the order;
- Term of contract (delivery period after receipt of order or beginning and end dates);
- Contractor's name, payee/vendor identification number, and address, including zip code;
- National Institute of Government Purchasing (NIGP) class/item for each item; Purchase Code Category;
- List of contract documents and their order of precedence;
- List of awarded items with quantity, unit of measure, unit price with extended totals; and
- Signature of authorized/certified purchasing representative.<sup>25</sup>

**Fixed-Price Contract.** A fixed price contract is suitable for the acquisition of commercial items, including construction, or for the acquisition of other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset. This contract type (1) places maximum risk and full responsibility for costs and resulting profit loss on the contractor, (2) provides maximum incentive for the contractor to control costs and perform effectively, and (3) imposes a minimum administrative burden upon the contracting parties.

**Cost Reimbursement Contract.** A cost reimbursement contract is suitable for situations in which uncertainties are involved in contract performance that do not permit costs to be estimated with sufficient accuracy to establish a fixed contract price. These types of contracts establish an estimate total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at their own risk).

**Time and Materials Contract.** A time and materials contract is suitable for use only after it has been determined that no other contract is suitable. This type of contract provides for the payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials. Subrecipients may only use a time and

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<sup>25</sup> State of Texas Procurement and Contract Management Guide.

materials type contract after a determination is made that no other contract is suitable and if the contract includes a cost ceiling that the contractor exceeds at its own risk.

**Note:** Subrecipients must ensure that the contract is not a prohibited cost-plus-a-percentage-of-cost or percentage-of-construction-cost contract.

### *5.13.2 Required Contract Provisions*

**CDBG-DR and CDBG-MIT Program Requirements.** All contracts executed between the subrecipient and a contractor must include the following CDBG-DR and/or CDBG-MIT Program requirements:

- Performance requirements and penalties;
- Project schedule including the performance period and completion date;
- Subrecipients must ensure contracts do not contain any cost plus or incentive savings provisions. No contracts must make reference to compensation adjustments for cost plus or incentive savings provisions;
- All Section 3 covered contracts shall include the Section 3 clause;<sup>26</sup> and
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.<sup>27</sup>

**Other Federally Required Provisions.** The subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.<sup>28</sup>

1. **Remedies.** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.<sup>29</sup>
2. **Termination for cause and for convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the subrecipient including the manner by which it will be affected and the basis for settlement.<sup>30</sup>
3. **Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of

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<sup>26</sup> 24 CFR §135.38

<sup>27</sup> 42 United States Code (U.S.C.) §6201

<sup>28</sup> 2 CFR §200.327

<sup>29</sup> 2 CFR §200 APPENDIX II (A)

<sup>30</sup> 2 CFR §200 APPENDIX II (B)

parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.<sup>31</sup>

4. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.<sup>32</sup>
5. **Records of non-Federal entities.** The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas General Land Office Community Development and Revitalization (GLO-CDR), and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-federal entity which are pertinent to the federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-federal entity's personnel for the purpose of interview and discussion related to such documents.<sup>33</sup>
6. **Record Retention.** Financial records, procurement records, labor records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-federal entities. The only exceptions are the following:
  - a. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;
  - b. When the non-federal entity is notified in writing by the federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
  - c. Records for real property and equipment acquired with federal funds must be retained for 3 years after final disposition;

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<sup>31</sup> 2 CFR §200 APPENDIX II (F)

<sup>32</sup> 2 CFR §200 APPENDIX II (H)

<sup>33</sup> 2 CFR §200.337(a)

- d. When records are transferred to or maintained by the federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-federal entity;
  - e. Records for program income transactions after the period of performance. In some cases, subrecipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-federal entity's fiscal year in which the program income is earned;
  - f. Indirect cost rate proposals and cost allocation plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates);
  - g. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission;
  - h. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.<sup>34</sup>
- 7. Contracting with small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.**
- a. The non-federal entity must take all necessary affirmative steps to assure that small, minority businesses, women's business enterprises, and labor surplus area firms are used when possible;
  - b. Affirmative steps must include:
    - i. Placing qualified small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms on solicitation lists;
    - ii. Assuring that small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are solicited whenever they are potential sources;
    - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms;
    - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms;
    - v. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

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<sup>34</sup> 2 CFR §200.334

- vi. Requiring the prime contractor to apply the requirements of this section to subcontracts.<sup>35</sup>
8. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”<sup>36</sup>
9. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay laborers and mechanics wages at a rate not less than the prevailing wage specified in a wage determination issued by the Secretary of Labor. In addition, contractors must be required to pay wages at least once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.<sup>37</sup>
10. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the

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<sup>35</sup> 2 CFR 200.321

<sup>36</sup> 2 CFR 200 APPENDIX II (C)

<sup>37</sup> 2 CFR 200 APPENDIX II (D)

work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.<sup>38</sup>

11. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).<sup>39</sup>
12. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors who apply for or bid on an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds conducted in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier until they reach the non-federal award.<sup>40</sup>
13. **Solid Waste Disposal Act.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.<sup>41</sup>
14. **Domestic preferences for procurements.** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured

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<sup>38</sup> 2 CFR 200 APPENDIX II (E)

<sup>39</sup> 2 CFR 200 APPENDIX II (G)

<sup>40</sup> 2 CFR 200 APPENDIX II (I)

<sup>41</sup> 2 CFR 200.323

products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under the federal award.<sup>42</sup>

### **Additional Required Provisions.**

1. **Verification No Boycott Israel.** As required by Chapter 2271, Texas Government Code, CONTRACTOR hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.<sup>43</sup>
2. **Foreign Terrorist Organizations.** Pursuant to Chapter 2252, Texas Government Code, Vendor represents and certifies that, at the time of execution of this Agreement neither Vendor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.<sup>44</sup>
3. **Verification of No Telecommunications or Surveillance Equipment.** As stated in 2 CFR 216, vendors must ensure that no telecommunications or surveillance equipment is purchased, installed, or repaired using any components manufactured or provided by any entity identified as prohibited in 2 CFR 216.<sup>45</sup>

### *5.13.3 Bonding Requirements*

Subrecipients are encouraged to accept the bonding policy and requirements of the GLO-CDR for construction and facility improvement contracts and subcontracts exceeding the simplified acquisition threshold.

- For contracts over \$50,000, subrecipients should require a bid guarantee from each bidder equivalent to five percent of the bid price consisting of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- For contracts over \$100,000, Subrecipients should require a performance bond on the part of the

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<sup>42</sup> 2 CFR 200.322

<sup>43</sup> Texas Government Code Chapter 2271

<sup>44</sup> Texas Government Code Section 2252.152

<sup>45</sup> 2 CFT 216

contractor for one hundred percent of the contract price as executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;

- Subrecipients should require a payment bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract;
  - Municipalities: A payment bond is required if the contract exceeds \$50,000.<sup>46</sup>
  - Counties: A payment bond is required if the contract exceeds \$25,000.<sup>47</sup>

#### *5.13.4 Workers' Compensation Requirements*

Subrecipients that enter into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each of the contractor's employees employed on the public project.<sup>48</sup> Each subcontractor on the public project shall provide the general contractor with a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the subrecipient.<sup>49</sup> Additionally, Subrecipients must include in bid specifications and contracts the specific language and provisions found in 28 Texas Administrative Code, §110.110(c)(7). Subrecipients are responsible for compliance with all applicable statutory policies.

#### *5.13.5 Changes to an Executed Contract*

When there are changes to an executed contract that affect the budget or scope change of a Subrecipient Agreement, the subrecipient should request an adjustment to both the Subrecipient Agreement and the subrecipient contract (such amendments in whole dollars only).

When changes to an executed construction or materials contract are necessary, the subrecipient must submit a Construction Contract Change Order form to GLO-CDR after fully executing the change order. The GLO-CDR will review change orders for programmatic compliance to ensure costs are eligible and procured in accordance with federal regulations. The change order must meet the following requirements:

- Sufficient grant or local funds are available to meet any increased costs;
- The original contract price has not been increased by more than 25 percent or decreased (without the consent of the contractor) by more than 25 percent for municipalities and 18 percent for counties;
- All items listed on the change order were competitively procured through the original bid or are

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<sup>46</sup> Government Code 2253.021(a)(2)(B)

<sup>47</sup> Government Code 2253.021 (a)(2)(A)

<sup>48</sup> Texas Labor Code 406.096 (a)

<sup>49</sup> Texas Labor Code 406.096 (b)

- defined as reasonable and substantiated by an independent cost estimate; and
- All items listed on the Change Order are eligible and comply with the Subrecipient Agreement, including the performance statement, implementation schedule, budget, and environmental review requirements.

Subrecipients are responsible for ensuring that any change order complies with program guidelines and meets the applicable procurement standards.

### 5.14 Equipment Purchases

Equipment purchased with CDBG-DR and/or CDBG-MIT funds must be used by the subrecipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the CDBG-DR and/or CDBG-MIT award. The subrecipient must not encumber the property without prior written approval from the GLO-CDR and HUD.<sup>50</sup> Prior approval should be requested through a memorandum sent through the GLO and to HUD.

When no longer needed for the original program or project\*, the equipment may be used in other activities, in the following order of priority:

- Activities under the CDBG-DR and/or CDBG-MIT award which funded the original program or project; then
- Activities under federal awards from other federal awarding agencies. This includes consolidated equipment for information technology systems

\*Subrecipients must include documentation in the property records to justify utilizing the equipment for other purposes.

When acquiring replacement equipment, subrecipients should use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.<sup>51</sup>

**Equipment Records.**<sup>52</sup> Subrecipients must maintain a property record that includes the following information:

- Description of property;
- Serial or other identifying number;
- Federal Award Identification Number (FAIN)- funding source of property;
- Title holder;
- Acquisition date;
- Cost, including CDBG-DR or CDBG-MIT cost share percentage if applicable;
- Location;

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<sup>50</sup> 2 CFR §200.313(c)

<sup>51</sup> 2 CFR §200.313(c)(4)

<sup>52</sup> 2 CFR §200.313(d)(1)

- Use and condition of the property; and
- Disposition date and sales price, if applicable.

A physical inventory of the property must be conducted, and the results reconciled with the property records at least once every two years.<sup>53</sup>

#### *5.14.1 Disposition Requirements<sup>54</sup>*

Prior to disposing of any equipment purchased with CDBG-DR and/or CDBG-MIT funds, subrecipients must request disposition instructions from the GLO-CDR if required by the terms and conditions of the Subrecipient Agreement. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the GLO-CDR. However, any proceeds received may be considered program income.

### **5.15 Recordkeeping**

For each different type of service, a separate file must be created for documentation records. Subrecipients must maintain and make available all documentation utilized during the procurement process, including but not limited to:

- Policies and procedures for procurement;
- Any GLO-CDR Procurement Checklist;
- Copies of all Invitation for Bids (“IFB”) and RFP/RFQs published and mailed;
  - Proof of advertisement, if applicable;
  - Proof that an adequate number of firms/individuals were directly contacted for proposals (e.g. copies of sent emails, certified mail receipts, and/or fax confirmations);
- Copies of bidding and/or proposal packages;
- Bid and proposal responses;
- Records of bid and proposal evaluation evidencing method of selection used;
- Evidence of cost and price analysis, if applicable;
- Verification that the vendor is not on the SAM.gov debarred list;
- Other procurement correspondence;
- Minutes of award or hiring resolution;
- Executed contract including all required contract provisions;
- Record of equipment purchases, if applicable; and
- Disposition/sales procedures for equipment purchased with CDBG-DR funds.

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<sup>53</sup> 2 CFR §200.313(d)(2)

<sup>54</sup> 2 CFR §200.313(e)

## 5.16 Resources

GLO-CDR has created a comprehensive website that contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

| Resource Number | Topic                                                    | Web Page URL                                                                                                                                                                | File Located Under Section / Accordion |
|-----------------|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| Resource 5.1    | GLO-CDR Procurement and Contracting Guidance             | <a href="https://www.glo.texas.gov/disaster-recovery/procurement-contract-guidelines">https://www.glo.texas.gov/disaster-recovery/procurement-contract-guidelines</a>       | N/A                                    |
| Resource 5.2    | State of Texas Procurement and Contract Management Guide | <a href="https://comptroller.texas.gov/purchasing/publications/procurement-contract.php">https://comptroller.texas.gov/purchasing/publications/procurement-contract.php</a> | N/A                                    |

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#). If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest version of the document. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager.