Texas General Land Office

Community Development and Revitalization

“The GLO stands ready to help our state maximize the use of this disaster recovery funding to build back stronger and more resilient communities.”

~ Commissioner George P. Bush

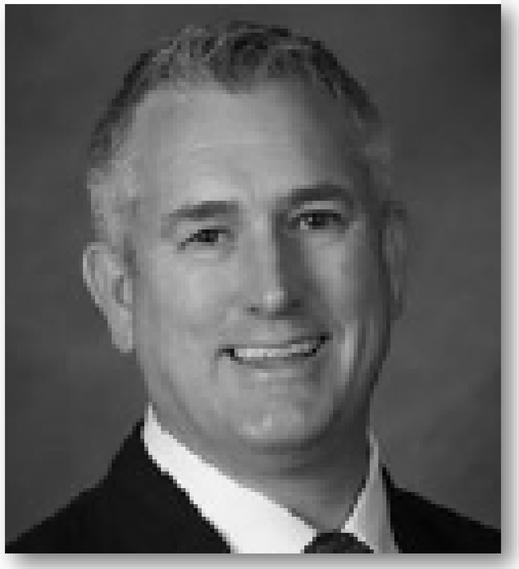
Procurement 201

Agenda

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

Presenter

Steve Higginbotham, ICF



Icons

Future Training

Applied to GLO-CDR

Applied to Subrecipients

Learning Objectives

After the training, Procurement 201 participants will:

1. Understand how to conduct procurement in accordance with GLO's requirements to follow federal requirements in 2 CFR Part 200, with consideration given to Texas government and local government codes
2. Understand and be able to avoid common findings and concerns

Application of Federal Regulations

When GLO-CDR and subrecipient requirements exceed the minimum provisions for CDBG-DR procurement, the entity should comply with the more stringent state or local procurement standards



For the State, GLO-CDR is demonstrating compliance with this requirement by following existing State procurement requirements as allowed per 2 CFR 200.317



For the State's subrecipients, GLO-CDR is requiring each to apply procurement requirements described in 2 CFR 200.318-326

Procurement Basics

- Update procurement policies and procedures to correspond with 2 CFR 200.318-200.326
- Follow a full and open competitive process in securing all products and services
- Perform an independent price and cost analysis
- **Failure to comply will likely result in ineligible expenses**



Test Your Knowledge

True or False

A subrecipient *may* require bidders to have experience working within the subrecipient's county, as that will make their service delivery more effective.



False

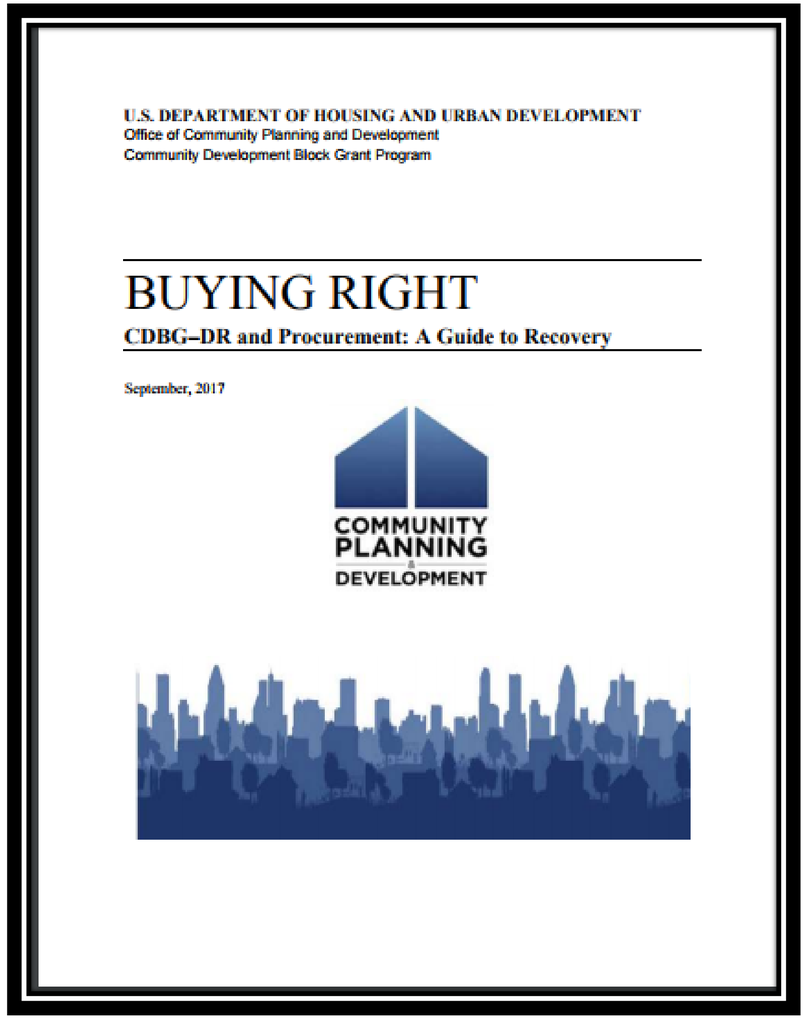
Imposing geographical preferences in the evaluation of bids or proposals directly violates the full and open competitive process requirement, per 2 CFR 200.319.

Key Federal Resources

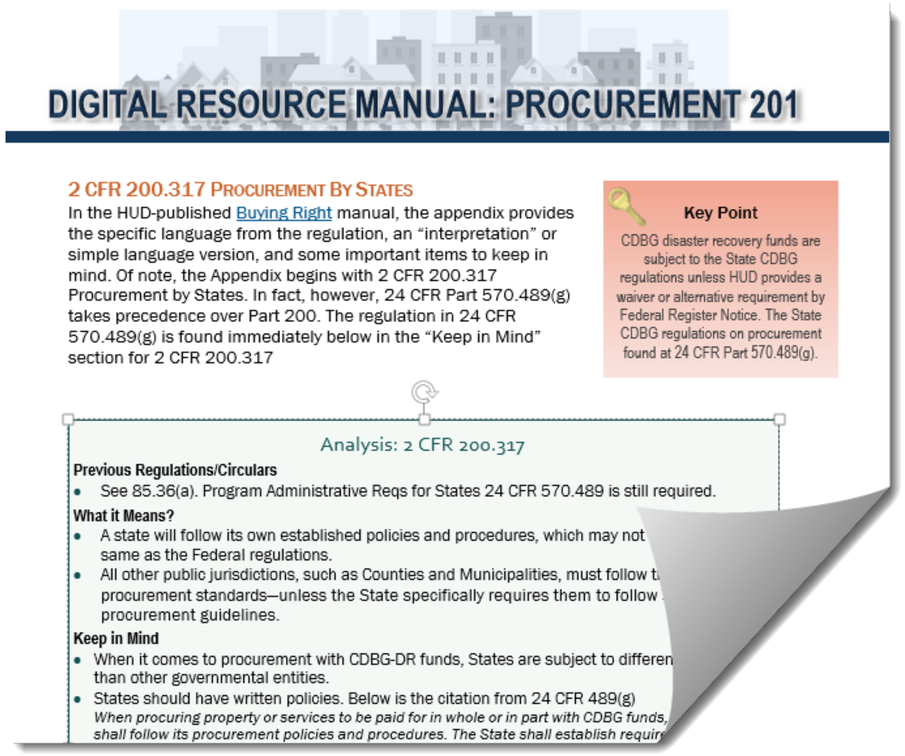
Buying Right

CDBG-DR and Procurement: A Guide to Recovery

https://www.hudexchange.info/resource/5614/buying-right-cdbg-dr-and-procurement-a-guide-to-recovery/



Key Program Resources



DIGITAL RESOURCE MANUAL: PROCUREMENT 201

2 CFR 200.317 Procurement By States

In the HUD-published 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.

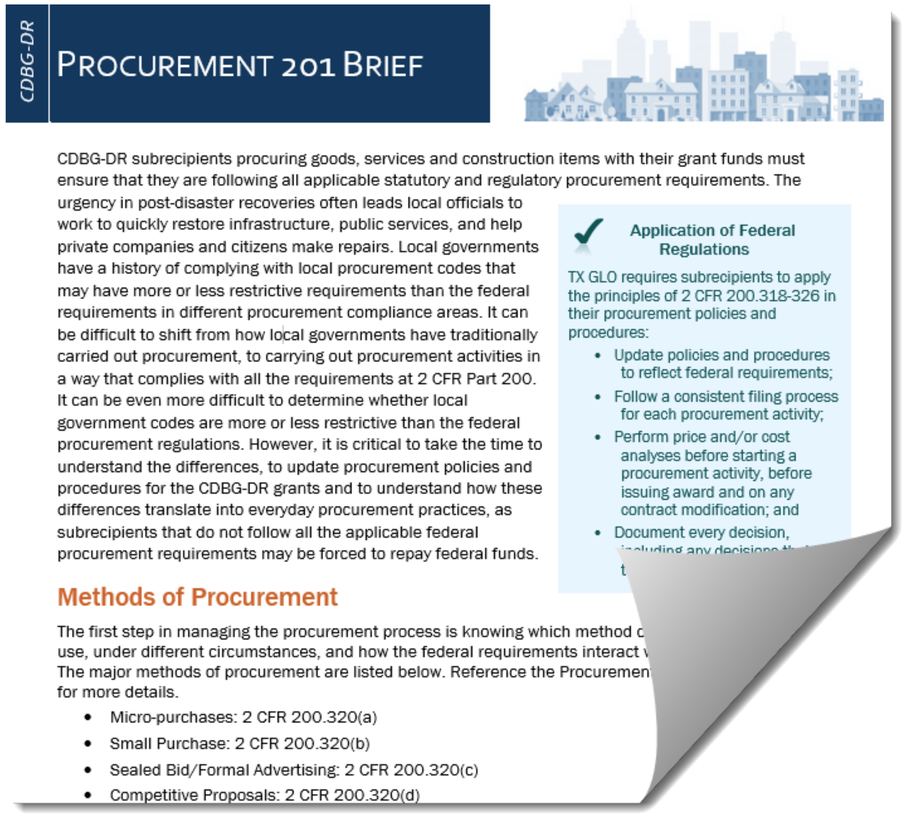
What it Means?

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

Keep in Mind

- When it comes to procurement with CDBG-DR funds, States are subject to differen 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, shall follow its procurement policies and procedures. The State shall establish requir



CDBG-DR

PROCUREMENT 201 BRIEF

CDBG-DR subrecipients procuring goods, services and construction items with their grant funds must ensure that they are following all applicable statutory and regulatory procurement requirements. The urgency in post-disaster recoveries often leads local officials to work to quickly restore infrastructure, public services, and help private companies and citizens make repairs. Local governments have a history of complying with local procurement codes that may have more or less restrictive requirements than the federal requirements in different procurement compliance areas. It can be difficult to shift from how local governments have traditionally carried out procurement, to carrying out procurement activities in a way that complies with all the requirements at 2 CFR Part 200. It can be even more difficult to determine whether local government codes are more or less restrictive than the federal procurement regulations. However, it is critical to take the time to understand the differences, to update procurement policies and procedures for the CDBG-DR grants and to understand how these differences translate into everyday procurement practices, as subrecipients that do not follow all the applicable federal procurement requirements may be forced to repay federal funds.

Application of Federal Regulations

TX GLO requires subrecipients to apply the principles of 2 CFR 200.318-326 in their procurement policies and procedures:

- Update policies and procedures to reflect federal requirements;
- Follow a consistent filing process for each procurement activity;
- Perform price and/or cost analyses before starting a procurement activity, before issuing award and on any contract modification; and
- Document every decision,

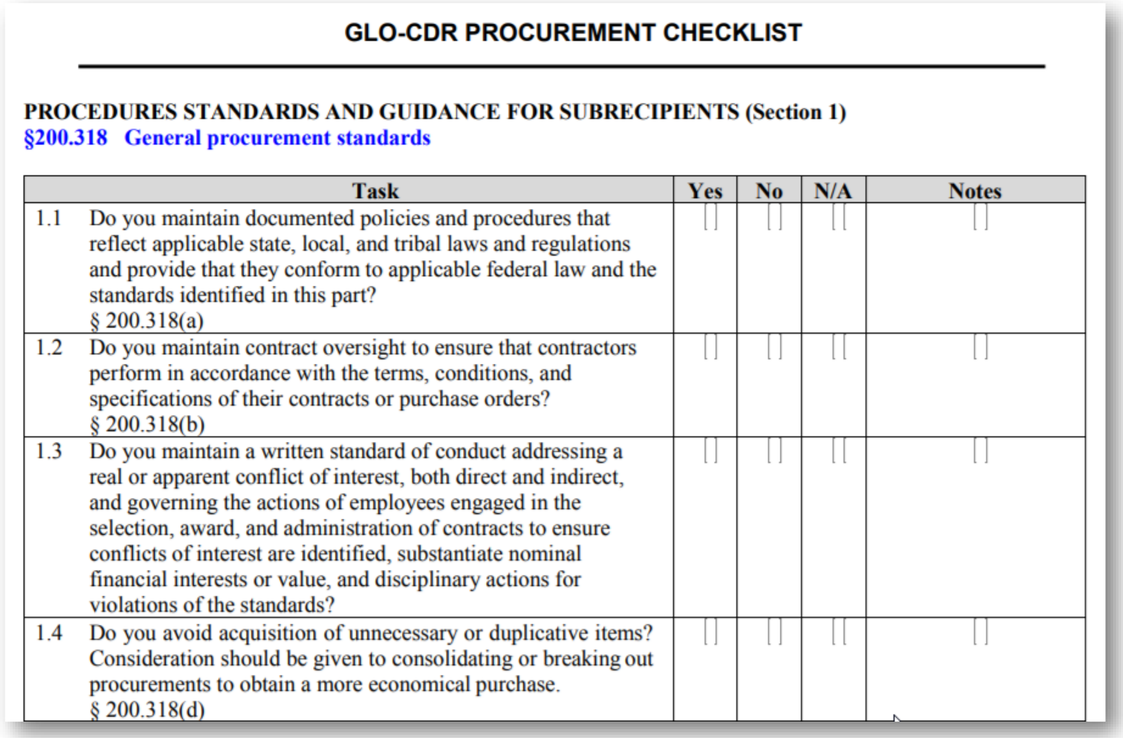
Methods of Procurement

The first step in managing the procurement process is knowing which method c use, under different circumstances, and how the federal requirements interact v The major methods of procurement are listed below. Reference the Procuremen for more details.

- Micro-purchases: 2 CFR 200.320(a)
- Small Purchase: 2 CFR 200.320(b)
- Sealed Bid/Formal Advertising: 2 CFR 200.320(c)
- Competitive Proposals: 2 CFR 200.320(d)

Key Program Resources

- GLO Procurement and Contracting Website
- GLO Procurement Checklist and Guidance for Subrecipients



GLO-CDR PROCUREMENT CHECKLIST

PROCEDURES STANDARDS AND GUIDANCE FOR SUBRECIPIENTS (Section 1)
§200.318 General procurement standards

	Task	Yes	No	N/A	Notes
1.1	Do you maintain documented policies and procedures that reflect applicable state, local, and tribal laws and regulations and provide that they conform to applicable federal law and the standards identified in this part? § 200.318(a)	☐	☐	☐	☐
1.2	Do you maintain contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders? § 200.318(b)	☐	☐	☐	☐
1.3	Do you maintain a written standard of conduct addressing a real or apparent conflict of interest, both direct and indirect, and governing the actions of employees engaged in the selection, award, and administration of contracts to ensure conflicts of interest are identified, substantiate nominal financial interests or value, and disciplinary actions for violations of the standards?	☐	☐	☐	☐
1.4	Do you avoid acquisition of unnecessary or duplicative items? Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. § 200.318(d)	☐	☐	☐	☐

Key State Resources

	Code	Application
Texas Local Government Code	Chapter 171	Conflicts of Interest of Officers of Municipalities, Counties and Certain Other Local Governments
	Chapter 252	Purchasing and Contracting Authority of Municipalities
	Chapter 262	Purchasing and Contracting Authority of Counties
Texas Government Code	Chapter 573	Degrees of Relationship & Nepotism Prohibitions
	Chapter 2253	Public Work Performance and Payment Bonds

Competition

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

Local Governments must:

- Follow procurement requirements at 2 CFR 200.319
- Follow TX Government Code and TX Local Government Code when more restrictive than 2 CFR 200
- If TX code conflicts with 2 CFR 200, follow 2 CFR 200
- Subrecipients may need to update procurement processes

Competition

Subrecipients must conduct procurement transactions that provide "full and open competition," per 2 CFR 200.319

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

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

Methods of Procurement

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

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- Follow TX Government Code and TX Local Government Code when more restrictive than 2 CFR 200
- If TX code conflicts with 2 CFR 200, follow 2 CFR 200
- Subrecipients may need to update procurement processes

Methods of Procurement

5 Methods of Procurement
Micro Purchases
Small Purchases
Sealed Bid
Competitive Proposals
Non-Competitive Proposals (Sole Source)

Special Circumstances
Cost Reimbursements Contracts
Architecture and Engineering Contracts
Construction Contracts

Methods of Procurement

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

Methods of Procurement

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

Methods of Procurement

Procurement Type	Reasonable-ness Method	Solicitation Method	Applications	Dollar Thresholds, if applicable	Different from TX Government Code?
Non-Competitive Proposals 2 CFR 200.320(f)	Cost Analysis	Submitted Proposals	Produced Items Single-task Services Professional Services Multi-task Services Designed Items	No particular threshold, but may only be used when other methods are not feasible.	**YES:** Exceptions allowed to the competitive bidding or proposal requirements for discretionary items, such as a public calamity, to preserve public health, safety or welfare and other exemptions.

Methods of Procurement

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

Test Your Knowledge

True or False

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



False

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

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

Test Your Knowledge

True or False

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



False

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

Test Your Knowledge

True or False

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



False

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

Price Analysis

Subrecipients must perform a price analysis in connection with every Micro Purchase and Small Purchase procurement action

Some common methods include:

- Comparing prices received in response to the solicitation to each other
- Comparing proposed prices to other similar contracts received in recent past (may factor market, inflation and/or material price changes)
- Reviewing other price lists or market prices of similar products to determine the market prices generally available to the public

Cost and Price Analysis

Subrecipients must perform a price analysis AND cost analysis for every procurement action above the Simplified Acquisition Threshold, including contract modifications

- Independent analysis can be done by staff, 3rd party consultants, or examination of existing price lists and product catalogs (RSMeans, Xactimate, etc.)
- Identify which staff or vendor will perform the independent analysis and ensure the analysis is performed **before** issuing the procurement and receiving the bids

Cost Analysis

When and why should I perform a Cost Analysis?

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

- Estimating costs before publishing a bid, RFP, or RFQ provides a point of reference for review when bids are received, for budgeting and ensuring the services are allowable, necessary, reasonable and related (allocable) to completing the project



Additional Cost Analyses

Additional cost analyses may be required in special circumstances

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

Cost vs. Price Analysis

Required Elements for Examination	Cost Analysis?	Cost Analysis Examples	Price Analysis?	Price Analysis Examples
Personnel Costs	Yes	Cost of laborers (direct/indirect) compared with prevailing wage rates, cost analysis, and other comparable contracts	No	NA
Travel Costs	Yes	Estimated amount of travel and relative costs to complete the work		
Equipment Costs	Yes	Estimated amount of equipment needed to complete the job		
Supply Costs	Yes	Estimated units of supplies needed to complete the job, accounting for market adjustments, inflation, and weather challenges		
Other Direct Costs	Yes	Other estimated direct costs required to complete the scope of work		

Cost vs. Price Analysis

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

Performing a Cost Analysis

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

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

Negotiations

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

- **<u>Sealed Bids</u>:** Not subject to negotiation. The Grantee should choose the lowest responsive bid from a ***responsible*** bidder.



Negotiations (cont.)

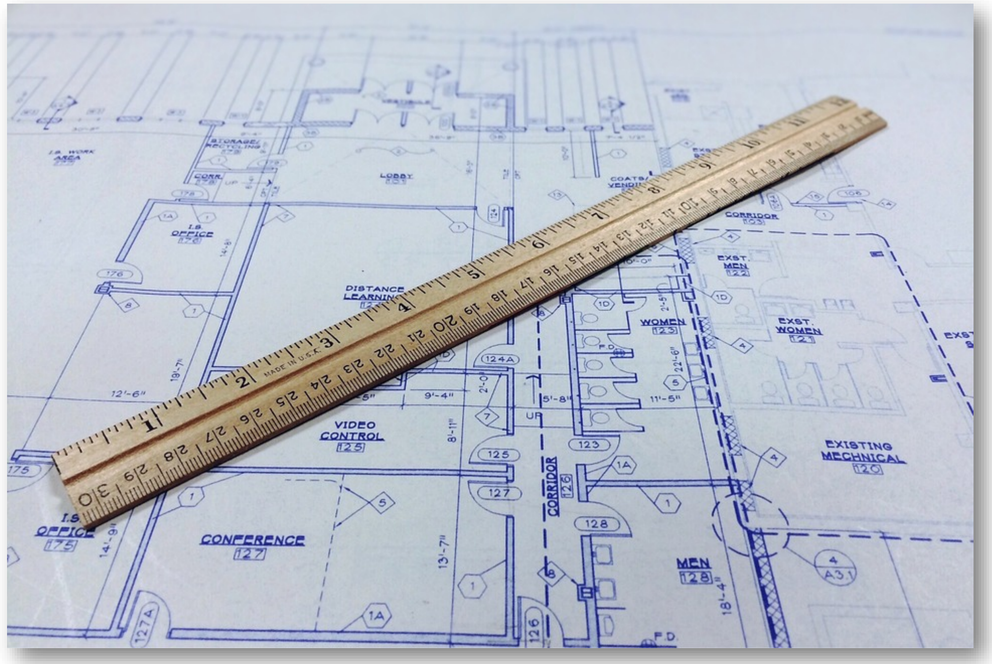
- **Competitive Procurements:** When performing a cost analysis and negotiating a contract that provides for a profit/fee, subrecipients must negotiate profit separately. Document any negotiations of profit, benefits, overhead, staff and other components analyzed in the cost analysis

- Final contract should be based on and supported by the cost analysis. Subrecipients may include contractor's risk, contractor's investment, level of subcontracting, etc. when calculating reasonable profit

Negotiations (cont.)

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

- **<u>Non-Competitive Procurements</u>:** Highly discouraged, but if they are pursued, subrecipients must negotiate profit as a separate element of the price for each contract in which there is no price competition



Negotiations (cont.)



For all methods of procurement, **document** components of the negotiation details, including agreements that may differ from the proposal which led to a final contract

Additional Requirements

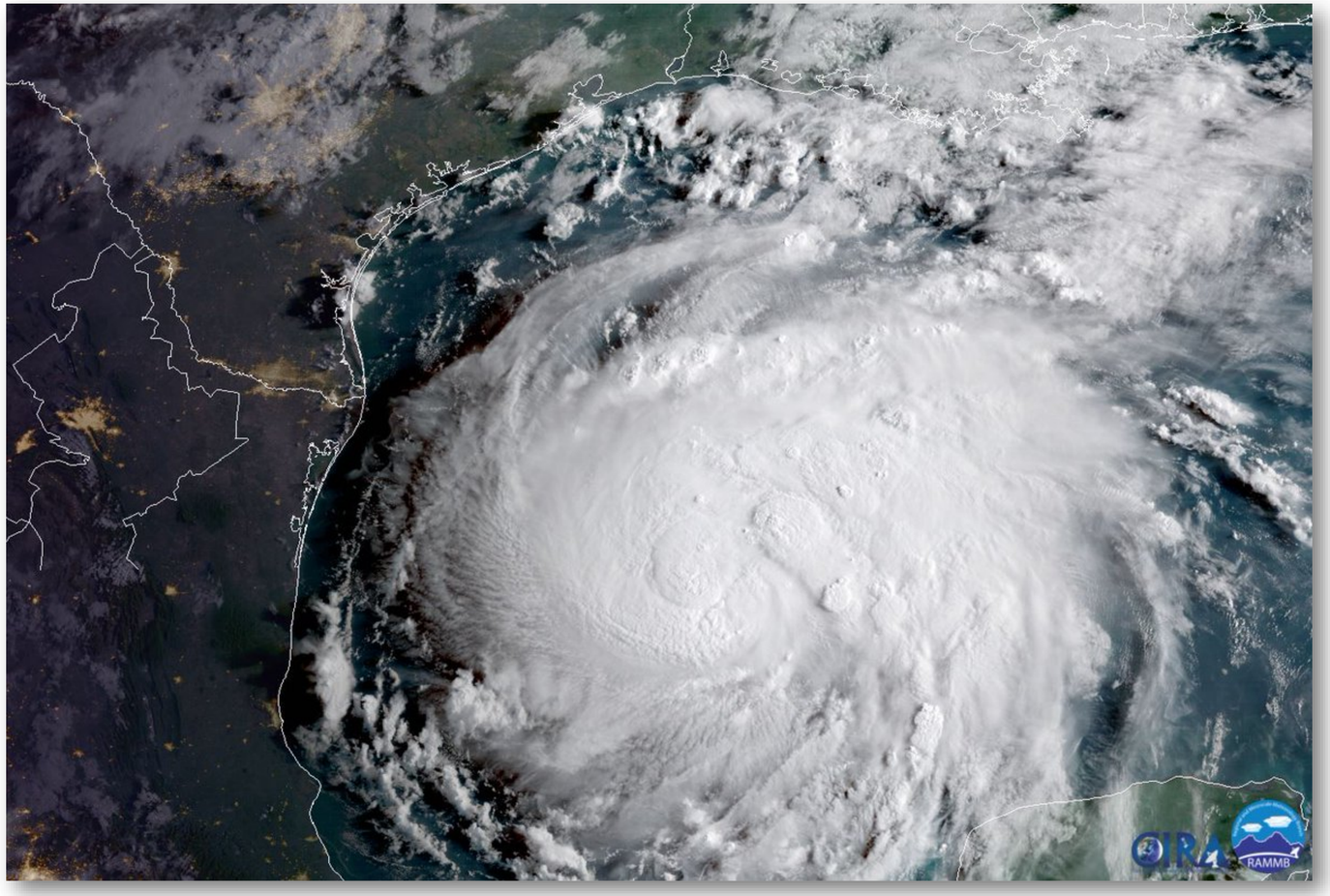
- Bid Bond and Other Bonding Requirements

  2 CFR 200.325 and TX Gov't Code Chapter 2253
- Required Contract Provisions 2 CFR 200.326
- Contracting with small and minority businesses, women's business enterprises 2 CFR 200.321
- Section 3 24 CFR Part 135
- Davis-Bacon and Related Acts

Common Findings or Concerns

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

Questions?



Survey



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