



Procurement Standards

2019 CDBG-DR Problem Solving Clinic

Kansas City – Overland Park | July 30 – August 1, 2019

Welcome & Speakers

- Session Objectives

- To provide grantees with an understanding of procurement basics as well as the standards for state and local government grantees, and for subgrants to local governments or subrecipients

- Speakers

- William Bedford



Agenda

- Introductory Remarks
- Procurement Basics
- Procurement By States
- Procurement By State Subgrantees/Subrecipients
- Procurement By Local Government Grantees and their Subrecipients
- Appropriation-Specific Requirements Applicable to All Grantees
- Practice Tips and Pitfalls



Introductory Remarks

- Feel free to ask questions during the presentation – no need to wait until the end
- This presentation provides high level overview and is not all inclusive – if there is a specific procurement question, follow-up with your CPD Rep



Procurement Basics

Procurement Regulations for CDBG-DR Grantees and Subrecipients

- 24 CFR 570.489(d) and (g) for States, plus FR notice requirements
 - States grantees must make decisions about the rules that apply to themselves and to the subgrants they provide to local governments and subrecipients
- 2 CFR 200.318-326 for Non-State Grantees, plus FR notice requirements

Appropriations Specific Requirements

- Important to review applicable FR Notices – they have the force of regulation



Procurement by States

STATES MUST DECIDE WHICH PROCEDURES IT WILL APPLY

24 CFR 570.489(d): *Fiscal controls and accounting procedures.*

A State shall have fiscal and administrative requirements for expending and accounting for CDBG-DR funds that:

- Are specific enough to ensure compliance
 - Ensure that CDBG-DR funds are spent for reasonable and necessary costs; &
 - Ensure that CDBG-DR funds are not used for general expenses.
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- A State may satisfy this requirement by:
 - Using requirements applicable to the use of its own funds;
 - Adopting new requirements; or
 - Applying the provisions in 2 CFR part 200 (in which case, the provisions of part 200 apply to the state and its subgrantees)



Procurement by States

24 CFR 570.489(g): Procurement

- When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures
- Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State.



Procurement by States

24 CFR 570.489(g): Procurement

- No cost plus a percentage of cost contracts or percentage of construction costs contracts.
- Must include standards of conduct governing employees engaged in contract award or administration.
- Must include any clauses required by Federal statutes, Executive orders, and implementing regulations.



Procurement By States

- How can a State comply?

The State's policies and procedures must set out the procurement rules based on full and open competition that apply to its CDBG-DR grant. It can:

1. Follow the procurement rules the State uses when it procures contracts with its own funds; OR
2. Adopt 2 CFR part 200, in which case it will follow 2 CFR 200.317 - follow the rules it follows when it procures with its own funds and rules for procurement of recovered materials in § 200.322; OR
3. Adopt new requirements for its CDBG-DR grant, such as the rules in 2 CFR 200.318-200.326 that apply to local governments.



Procurement By State Subgrantees/Subrecipients

- 24 CFR 570.489(g): The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition.

How can a state comply?

1. Direct subgrantees/subrecipients to follow 2 CFR 200.318-326; OR
2. Establish other requirements that comply with 570.489(g) (e.g., rules that specify methods of procurement, are based on full and open competition, prohibit cost plus contracts, include standards of conduct, and mandate use of Federal contract clauses).



Procurement By Local Government Grantees and their Subrecipients

Local government grantees and their subrecipients must:

- Follow procurement requirements at 2 CFR 200.318-326;
- Local government grantees may also be required to follow State laws or local procurement rules that apply on their own terms.

Practice Tip: As a good rule of thumb, where local and state rules address the same matters/requirements as 2 CFR part 200, follow the most restrictive standard unless it conflicts with the Federal requirement (if there is a conflict, follow the part 200 rule or contact CPD for guidance)



Pop Quiz

In the City of Scarborough, state law and the local procurement code both allow the City to use of geographic preference when procuring a contractor for grant administration services.

2 CFR 200.319(b), prohibits the use of statutorily or administratively imposed state or local geographical preferences when evaluating or scoring bids.

Can a local government establish a local preference in its solicitation for grant administration services and partially fund it with CDBG-DR funds?



Pop Quiz

This practice is non-competitive. Even if state or local law mandates a preference for local firms, CDBG-DR funds cannot be used for a contract with a local geographical preference in conflict with 2 CFR 200.319(b).

See also 200.318(a): local governments' procurement procedures must reflect applicable State/local law, *provided* that the procurements conform to applicable Federal law and the standards identified in part 200.



Procurement Standards: 200.318 - .326

General and specific procurement standards are broken into the following categories:

- 2 CFR 200.318: General Procurement Standards
- 2 CFR 200.319: Competition
- 2 CFR 200.320: Methods of Procurement
- 2 CFR 200.321: Socio-Economic Contracting
- 2 CFR 200.322: Procurement of Recovered Materials
- 2 CFR 200.323: Contract Cost and Price
- 2 CFR 200.324: Review of Procurements
- 2 CFR 200.325: Bonding Requirements
- 2 CFR 200.326: Contract Provisions



General Procurement Standards (highlights)

The Non-Federal Entity must:

- Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders (2 CFR 200.318(b))
- Maintain written standards of conduct covering conflicts of interest for employees and related organizations (2 CFR 200.318(c))
- Be responsible, in accordance with good administrative practice and sound business judgement for the settlement of all contractual issues. (2 CFR 200.318(k))
- Avoid acquisition of unnecessary or duplicative items. (2 CFR 200.318(d))



General Procurement Standards (highlights)

A Non-Federal Entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement taking into consideration such matters as:

- Integrity
- Public Policy Compliance
- Record of Past Performance
- Financial and Technical Resources

(2 CFR 200.318(h))



General Procurement Standards (highlights)

The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following:

- Rationale for the method of procurement
- Selection of contract type
- Contractor selection or rejection
- The basis for the contract price

(2 CFR 200.318(i))



General Procurement Standards (highlights)

The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is 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.

(2 CFR 200.318(j))



Competition (highlights)

- The non-Federal entity must conduct procurement transactions in a manner providing “full and open competition” – see 2 CFR 200.319
- Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be **excluded** from bidding (2 CFR 200.319(a))

PRACTICE TIP: Scoping and scaling procurements appropriately. E.g., If it is important to have the design firm oversee construction, include both services in the procurement. BUT, consider breaking out procurements to obtain a more economical price (200.318(d)), and take necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (200.321(a) and (b))



Competition (highlights)

- A non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except where Federal law expressly mandates or encourages geographical mandates.
- Prohibition does not apply to:
 - State Licensing Requirements
 - Architectural and engineering (A/E) services, provided there is an appropriate number of qualified firms that can still compete for the contract (2 CFR 200.319(b))



Methods of Procurement

- Micro-purchase
- Small Purchases
- Sealed Bidding
- Competitive Proposals
- Non-Competitive Proposals



Procurement Type	Solicitation Method	Applications	Dollar Thresholds if applicable
Micro Purchases 2 CFR 200.320(a)	<ul style="list-style-type: none"> No solicitation required distribute purchases equitably among qualified suppliers Price considered to be reasonable 	<ul style="list-style-type: none"> Supplies or services 	<ul style="list-style-type: none"> Under \$2,000 for construction (Davis-Bacon) Under \$10,000 for all other purchases
Small Purchase 2 CFR 200.320(b)	<ul style="list-style-type: none"> Price or Rate Quotations - “an adequate number” of sources (at least 3) Submitted Bids 	<ul style="list-style-type: none"> Services (e.g., single task), Supplies (e.g., produced items) Other property 	<ul style="list-style-type: none"> \$250,000 or less for produced items or for non-construction services



Procurement Type	Solicitation Method	Applications	Dollar Thresholds if applicable
<p>Sealed Bid</p> <p>Formal Advertising</p> <p>2 CFR 200.320(c)</p> <p>** preferred for construction if conditions met</p>	<ul style="list-style-type: none"> Submitted Bids Firm fixed price (lump sum or unit price) awarded to bidders who complies with terms and has lowest price 	<ul style="list-style-type: none"> Construction Items Produced or Designed Items 	<ul style="list-style-type: none"> All construction contracts in excess of \$2,000 Produced or designed items over \$250,000
<p>Competitive Proposals</p> <p>2 CFR 200.320(d)</p> <p>** use when sealed bid conditions not met</p>	<ul style="list-style-type: none"> Submitted Proposals 	<ul style="list-style-type: none"> Professional Services Multi-Task Services Designed Items 	<ul style="list-style-type: none"> Professional Services and/or; Multi-task Services over \$250,000 Designed Items over \$250,000 when Sealed Bid is not appropriate



Procurement Type	Solicitation Method	Applications	Dollar Thresholds if applicable
<p>Non-competitive Proposals</p> <p>2 CFR 200.320(f)</p> <p>** CDBG-DR generally cannot rely on exigency to allow for sole source procurement</p>	<ul style="list-style-type: none"> Submitted Proposal from only one source Only if certain circumstances apply 	<ul style="list-style-type: none"> Produced Items Single-task Service Professional Services Multi-task Services Designed Item 	<ul style="list-style-type: none"> No particular threshold, but may only be used when other methods are not feasible



Cost and Price (Highlights)

- A Non-Federal Entity must perform a price or cost analysis in connection with every procurement action above the simplified acquisition threshold (\$250,000), including contract modifications
- The method and degree of analysis is dependent on the facts and circumstances surrounding the particular procurement
- **The non-Federal entity must make independent estimates before receiving bids or proposals**
- A non-Federal entity shall 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.

(2 C.F.R. § 200.323)



Cost and Price (Highlights)

- A non-Federal entity must not use a cost-plus-percentage-of-cost or cost-plus-percentage-of-construction-cost method of contracting (2 C.F.R. § 200.323(d))



Additional Requirements

- Debarment (2 CFR 200.213, [SAM.gov](https://www.sam.gov))
- Required Contract Provisions (2 CFR 200.326)
 - Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.
- Contracting with small and minority businesses, women's business enterprises (2 CFR 200.321)
- Section 3



Appropriation-Specific Requirements

Important to review the applicable Federal Register Notice for any appropriation-specific procurement requirements. Examples include:

- Public website requirements
- Posting of executed contracts for public review
- Contract provision for penalties (if applicable)



Practice Tips and Common Pitfalls

- Debarment Check (on SAM.gov)
- Independent Cost Estimate
- Cost or Price Analysis
- 2 CFR §200.330 Subrecipient and contractor determinations (applies to States and local governments subject to part 200).
- Inappropriate Change Orders
- Recordkeeping



Practice Tips and Common Pitfalls

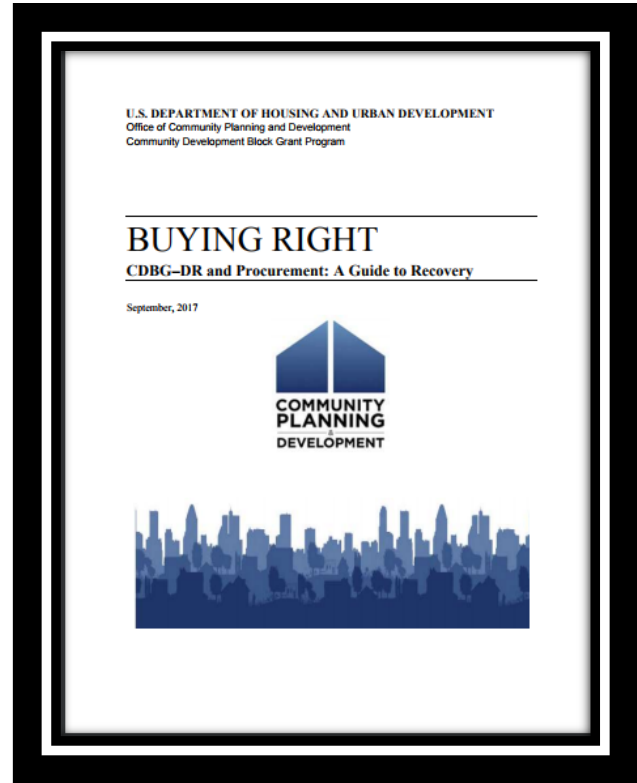
- Inappropriate Change Orders
- Piggybacking on pre-disaster procurement
- Recordkeeping



Helpful Resource

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/>



Questions?

