

**NEBRASKA**

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**DEPT. OF ECONOMIC DEVELOPMENT**

# Procurement Policies and Procedures

*State of Nebraska CDBG-DR Program*

**JANUARY 2022**

## RECORD OF CHANGES

The following table summarizes amendments to the Procurement Policies and Procedures (P&P).

Date Change Approved	Change Number	Description of Change

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# 1 POLICY OVERVIEW

As a recipient of United States (US) Department of Housing and Urban Development (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) funds, the State of Nebraska must adhere to specific requirements set forth under 24 CFR § 570.489(g), 2 CFR §§ 200.317 through 200.327 and the applicable Federal Register Notice published February 9, 2018 (83 FR 5844, at 5847 and 5860).

The CDBG-DR grant will be administered by the State of Nebraska Department of Economic Development (DED), through procurement contracts or through Subrecipients or Successful Applicants. The State of Nebraska maintains ultimate responsibility for ensuring compliance with procurement policies as outlined in the **State of Nebraska Procurement Manual**, which applies to all programs regardless of source of funds.

These P&P are intended to serve as guidelines for the procurement of supplies, equipment, construction services and professional services for the implementation of programs using CDBG-DR funds.

The State of Nebraska will enforce conduct of the CDBG-DR program to ensure that no person is excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability, or marital status.

# 2 ACRONYMS

Acronym	Meaning
A/E	Architecture and Engineering
CDBG-DR	Community Development Block Grant – Disaster Recovery
CFR	Code of Federal Regulations
COSO	Committee of Sponsoring Organizations
DED	Nebraska Department of Economic Development
DR	Disaster Recovery
DUNS	Data Universal Numbering System
HUD	United States Department of Housing and Urban Development
ITB	Invitation to Bid
P&P	Policy and Procedures

Acronym	Meaning
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
ROF	Release of Funds
SAM	System for Awards Management
US	United States

### 3 DEFINITIONS

Controlling definitions are found in the **CDBG-DR Program Definitions**. Key definitions specifically relating to this P&P are stated below.

**Applicant:** Applicant means a State, metropolitan city, urban county, governmental entity, tribe, developer, or nonprofit organization that submits a written expression of interest in a CDBG-DR program. Governmental entities include those that have general governmental powers (e.g., a city or county), as well as those with limited or special powers. For-profit Successful Applicants are not subject to the requirements of this P&P unless specifically mentioned.

**Procurement:** The buying, purchasing, renting, leasing, or otherwise acquiring goods or services. The term also includes all functions that pertain to the obtaining of goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administrations.

### 4 SCOPE

This policy applies to all DED employees, providers, vendors, contractors, consultants, Subrecipients, partners, citizens, non-profit Successful Applicants, external departments, and agencies doing business with DED, as well as beneficiaries and others associated with, working for, accessing, or attempting to access benefits under the CDBG-DR programs.

### 5 ROLES AND RESPONSIBILITIES

**DED:** As Grantee for the CDBG-DR program, has adopted 2 CFR § 200.317 for any procurement it undertakes with CDBG-DR funds. Subrecipients and non-profit Successful Applicants are required to adopt the standards set forth in 2 CFR §§ 200.318 through 200.327, as well as State and local laws and regulations for any procurement it undertakes with CDBG-DR funds. State of Nebraska procurement is set out in Neb. Rev. Stat. § 73-504(2), and detailed in the **State of**

**Nebraska Procurement Manual**, and is applicable to all procurement in the State of Nebraska. This P&P is a guide for Subrecipients and non-profit Successful Applicants and does not supersede the applicable reference documents. DED will review all contracts procured by Subrecipients and non-profit Successful Applicants with CDBG-DR funds to ensure compliance with all applicable laws and regulations.

**Subrecipient:** A governmental entity that is serving as a Subrecipient shall follow the procurement rules in 2 CFR Part 200, in the **State of Nebraska Procurement Manual**, and other references detailed in this P&P. See also Successful Applicant.

**Successful Applicant:** A non-profit, non-governmental Successful Applicant is responsible for the same Federal funds oversight responsibilities as a Subrecipient, including the procurement requirements set out in 2 CFR Part 200. For-profit Successful Applicants, for example housing developers, are not required to follow these procurement standards unless specifically mentioned.

## 6 PROCUREMENT POLICY

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### 6.1 POLICY OVERVIEW

The Subrecipient and non-profit Successful Applicant must establish and maintain effective internal control over the CDBG-DR award, providing reasonable assurance that all parties involved comply with Federal, State, and local statutes, regulations, and the terms and conditions of the CDBG-DR award. Internal controls should comply with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the US or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).<sup>1</sup>

Under internal controls, the Subrecipient or non-profit Successful Applicant establishes standards of conduct concerning integrity and ethical values. The Subrecipient or non-profit Successful Applicant uses ethical values to balance the needs and concerns of different stakeholders, such as regulators, employees, and the general public. The standards of conduct guide the directives, attitudes, and behaviors of the organization in achieving the entity’s objectives. Furthermore, these internal controls are critical when a Subrecipient or non-profit Successful Applicant is working with a contractor to do work on behalf of the organization. For example, a contractor shall not be involved in the preparation of bid documents should said contractor intend to bid on any part of the Subrecipient’s or non-profit Successful Applicant’s project. Nor should that entity be involved in reviewing, scoring, or decision-making involving an award of contract. Internal control of such procedures may safeguard against loss leader arrangements, conflicts of interest, and other compliance concerns.

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<sup>1</sup> 2 CFR § 200.303(a).

**Conducting procurement processes prior to CDBG-DR award does not remove the requirement to make use of internal controls. It is the Subrecipient's or non-profit Successful Applicant's responsibility to comply with Federal, State, and local statutes, regulations, and the terms and conditions of Federal awards, including CDBG-DR.**

**WARNING:** The Subrecipient or Successful Applicant may not execute any contract for goods or services prior to HUD issuing the Subrecipient or Successful Applicant a written environmental clearance and Notice of Release of Funds (ROF) with the exception of contracts to support program or project delivery.

## 6.2 CONFLICT OF INTEREST

DED and Subrecipients or non-profit Successful Applicants must take significant steps to avoid **conflicts of interest**. As set out in 2 CFR § 200.318, "No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest."<sup>2</sup> In certain instances, where the Subrecipient or non-profit Successful Applicant solicited a firm to prepare the CDBG-DR application for submission to DED, and where that firm may also provide professional services related to the CDBG-DR project and intends to submit a proposal for those services, that firm may not in any way assist the Subrecipient or non-profit Successful Applicant in the procurement process. For example, if ABC & Associates intends to submit a proposal for services, ABC & Associates, as CDBG-DR application preparer, may not assist the Subrecipient or non-profit Successful Applicant in the procurement process. Such a conflict of interest may result in DED disallowing the use of CDBG-DR funds for the payment of such costs of the subsequently procured contract and may affect future eligibility to receive CDBG-DR funds.

State of Nebraska personnel involved in the procurement of goods and services have the responsibility to uphold Nebraska procurement laws and act in good faith to serve the best interests of the State of Nebraska and its taxpayers. All public officers and state employees, not just procurement professionals, are expected to read and understand these key statutes prescribing proper conduct. Any alleged violations of these standards of conduct shall be reported to DED and are subject to review, and if proven, disciplinary action, including but not limited to dismissal or transfer. Where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

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<sup>2</sup> A conflict of interest arises when an employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. See 2 CFR §200.318(c)(1).

## 6.3 GENERAL PROVISIONS (2 CFR § 200.318)

The intent of standards and procedures for procurement is to ensure that supplies, equipment, construction, and other services are:

- Obtained as efficiently and economically as possible; and
- Procured in a manner that provides, to the maximum extent practical, open and free competition.

Solicitations must explain all the requirements that the bidder or offeror has to meet for the Subrecipient or non-profit Successful Applicant to evaluate the bid or offer. Solicitations for goods and services must be based on a clear and accurate description of the material, product, or service to be procured, and cannot contain features which unduly restrict competition.<sup>3</sup> Some of the situations considered restrictive of competition include, but are not limited to:

- Placing unreasonable qualifying requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Non-competitive pricing practices between firms or affiliated companies;
- Non-competitive awards to consultants on retainer contracts;
- Organizational conflicts of interest;
- Specifying only “brand name” products instead of allowing an “equal” product; and
- Any arbitrary action in the procurement process.

Subrecipients and non-profit Successful Applicants must award contracts to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Subrecipient or non-profit Successful Applicant, price and other factors considered. Any and all bids may be rejected when it is in the Subrecipient’s or non-profit Successful Applicant’s interest to do so. The Subrecipient and non-profit Successful Applicant must ensure to award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. The Subrecipient and non-profit Successful Applicant should consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

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<sup>3</sup> 2 CFR § 200.319.

## 6.4 NEBRASKA PROCUREMENT REQUIREMENTS

When construction contractors are required, a licensed contractor with the State of Nebraska and local jurisdictions will be required. According to each local jurisdiction, permits may be required for work conducted utilizing CDBG-DR funding. For all work being performed, construction contractors will be required to have a one-year warranty.

If Subrecipients or Successful Applicants, including for-profit developers, work with homeowners, additional protections for the homeowners are required. Each homeowner will have the right to appeal work performed by a contractor. Subrecipients and Successful Applicants will be responsible for having a process in place to facilitate any homeowner appeals. Subrecipients and Successful Applicants will be required to describe their appeals process in the grant application. The Subrecipient Agreement or contract with Successful Applicant will also require maintenance of the appeals process in their policies and procedures, which DED will review as an element of regular program monitoring.

## 6.5 FEDERAL PROCUREMENT REQUIREMENTS

Subrecipients and non-profit Successful Applicants receiving CDBG-DR funding will be required to follow the procurement standards of 2 CFR §§ 200.318 through 200.327 and the contract provisions within Appendix II to Part 200 (see **Appendix A: Text of 2 CFR §§ 200.318 through 200.327 and Appendix II to Part 200**). These procurement standards are to be incorporated into all Subrecipient Agreements and contracts with non-profit Successful Applicants. Subrecipients and non-profit Successful Applicants will also be required to update procurement policies and procedures to correspond with these requirements.

Subrecipients and non-profit Successful Applicants should utilize resources to comply with procurement requirements. This guidance is designed to maximize CDBG-DR resources and avoid common pitfalls of noncompliance that could result in the recapture of funds and re-procurement. Subrecipients and non-profit Successful Applicants are strongly encouraged to understand the procurement requirements or risk adverse consequences.

### 6.5.1 SUMMARY OF FEDERAL REQUIREMENTS

- 1. Records and Files:** Subrecipients and non-profit Successful Applicants must maintain records sufficient to detail the history of procurement. Subrecipients and non-profit Successful Applicants must maintain files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection or rejection process, and the basis for the cost or price of a contract.<sup>4</sup>

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<sup>4</sup> 2 CFR § 200.318(i).

2. **Pre-Qualified Lists of Vendors or Contractors:** If such lists are used, they must be current, developed through open solicitation, include adequate numbers of qualified sources to ensure maximum free and open competition, and must allow entry of other firms to qualify at any time during the solicitation period.<sup>5</sup>
3. **Unfair Competitive Advantage:** To eliminate unfair competitive advantage, if the Subrecipient or non-profit Successful Applicant has used a contractor to develop or draft specifications, requirements, statements of work, or invitations for bids (IFB) or requests for proposals (RFP), the Subrecipient or non-profit Successful Applicant must exclude that contractor from the competition for such procurements.<sup>6</sup>
4. **Debarred or Ineligible Contractors:** The Subrecipient or non-profit Successful Applicant must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 12689, and 2 CFR § 180.700-885, "Suspension and Debarment."

The Subrecipient or non-profit Successful Applicant must verify and maintain documentation that the firm or contractor and any subcontractor does not have an active exclusion on the System for Award Management (SAM). See section 7.6, **System for Awards Management (SAM) Verification** for additional information on SAM registration. Federal agencies maintain the active exclusion/debarred list. To determine eligibility, the Subrecipient or non-profit Successful Applicants must review SAM (<https://www.sam.gov/>) for all contractors and firms submitting a bid or proposal. SAM verification should occur at the time of submission or negotiations and must occur prior to selecting a contractor or firm for contract award.

**NOTE:** SAM registration of contractor or firm is not required to verify they are not on the debarred list nor is an active SAM registration confirmation that they are not debarred/ineligible.

5. **Written Procedures For Contractor Selection:** The Subrecipient or non-profit Successful Applicant must have written selection procedures for procurement transactions,<sup>7</sup> adequate to ensure the following:
  - a. Avoid acquisition of unnecessary or duplicate items. Consider consolidating or breaking out procurements to obtain a more economical purchase. Where

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<sup>5</sup> 2 CFR § 200.319(e).

<sup>6</sup> 2 CFR § 200.319(b).

<sup>7</sup> 2 CFR § 200.319(d).

appropriate, make an analysis of lease vs. purchase alternatives, and any other appropriate analysis to determine the most economical approach.<sup>8</sup>

- b. Whenever possible, use local intergovernmental agreements or inter-entity agreements for procurement or use of common goods and services to foster greater economy and efficiency.<sup>9</sup>
- c. Whenever possible, use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.<sup>10</sup>
- d. Whenever possible, use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunity for cost reductions.<sup>11</sup>
- e. All purchase orders (and contracts) are signed by the Subrecipient's or non-profit Successful Applicant's authorized official(s).
- f. Items delivered and paid for are consistent with the purchase order or contract for the goods or services.
- g. Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized.
- h. Perform a cost or price analysis for every procurement action that exceeds the Simplified Acquisition Threshold, including contract modifications, and maintain documentation to that effect in the Subrecipient's or non-profit Successful Applicant's files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Subrecipient or non-profit Successful Applicant must make independent estimates before receiving bids or proposals.<sup>12</sup>
- i. Negotiate profit or fee separately from price for each contract where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting,

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<sup>8</sup> 2 CFR § 200.318(d).

<sup>9</sup> See 2 CFR §200.318(e). Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

<sup>10</sup> 2 CFR §200.318(f).

<sup>11</sup> 2 CFR § 200.318(g).

<sup>12</sup> 2 CFR § 200.324.

the quality of past performance, and industry profit rates in the surrounding geographical area for similar work.<sup>13</sup>

6. **Contract Pricing:** Subrecipients and non-profit Successful Applicants must not use “cost plus a percentage of cost” pricing for contracts;<sup>14</sup> in addition, Subrecipients and non-profit Successful Applicants may use “time and material” type contracts only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.<sup>15</sup>
7. **Protest Procedures:** Subrecipients and non-profit Successful Applicants must have protest procedures in place to handle and resolve disputes relating to procurement.<sup>16</sup>
8. **Documenting Contractor Performance:** Subrecipients and non-profit Successful Applicants must have a documented system of contract administration for determining the adequacy of contractor performance.<sup>17</sup>
9. **Code of Conduct:** Subrecipients and non-profit Successful Applicants must have a written code of conduct governing employees, officers, or agents engaged in the award or administration of contracts.<sup>18</sup>

## 7 PROCUREMENT METHODS

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Among the procurement approaches described below, the competitive sealed bid resulting in a firm, fixed-price contract is the preferred procurement approach when there are numerous available and qualified providers, when the requirements and specifications are thoroughly detailed and are unlikely to change, and where the Subrecipient or non-profit Successful Applicant has the opportunity to make the provider assume a large share of the risk for nonperformance.

The Federal guidelines listed below are set out in 2 CFR §§ 200.318 through 200.327. Subrecipients and non-profit Successful Applicants are also subject to the requirements and standards as set by the **State of Nebraska Procurement Manual**.

### 7.1 MICRO PURCHASES (2 CFR § 200.320(A)(1))

**DED considers procurement by micro-purchase procedures best suited to obtaining small quantities of supplies and services.** Subrecipients and non-profit Successful Applicants may

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<sup>13</sup> 2 CFR § 200.324(b).

<sup>14</sup> 2 CFR § 200.324(d).

<sup>15</sup> 2 CFR § 200.318(j).

<sup>16</sup> 2 CFR § 200.318(k).

<sup>17</sup> 2 CFR § 200.318(b).

<sup>18</sup> 2 CFR § 200.318(c)(1).

follow either their local small purchase procurement policy or the Federal policy. However, Subrecipients and non-profit Successful Applicants must follow the procurement policy that is most stringent, whether the local policy or Federal policy (described below).

The micro-purchase method may be used for procurement of supplies or services the aggregate of which does not exceed the micro-purchase threshold.<sup>19</sup> As of the publication date of this P&P, the micro-purchase threshold set by the Federal Acquisition Regulation (FAR) at 48 CFR § 2.101 is \$10,000, except for construction at \$2,000 and services at \$2,500. Additionally, a Subrecipient or non-profit Successful Applicant may establish a higher threshold than the micro-purchase threshold identified in the FAR. The Subrecipient or non-profit Successful Applicant may self-certify a threshold of up to \$50,000<sup>20</sup> on an annual basis. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- A qualification as a low-risk auditee, in accordance with the criteria in 2 CFR § 200.520 for the most recent audit;
- An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or
- For public institutions, a higher threshold consistent with State law.

A procurement of more than this threshold may not be inappropriately broken up into smaller components solely to qualify for the micro-purchase approach. The Subrecipient or non-profit Successful Applicant must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the Subrecipient or non-profit Successful Applicant considers the price to be reasonable based on research, experience, purchase history or other information and documents its files accordingly.

## 7.2 SMALL PURCHASE (2 CFR § 200.320(A)(2))

**DED considers procurement by small purchase procedures best suited to obtaining small quantities of supplies or services.** The Subrecipient or non-profit Successful Applicant may follow either their local small purchase procurement policy or the Federal policy. However,

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<sup>19</sup> 2 CFR §200.320(a)(1). The “micro-purchase threshold” means the dollar amount at or below which a subrecipient may purchase property or services using micro-purchase procedures. Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR § 2, subpart 2.1, unless a higher threshold is requested by the subrecipient and approved by the cognizant agency for indirect costs. The subrecipient is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures.

<sup>20</sup> Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs.

Subrecipients and non-profit Successful Applicants must follow the procurement policy that is most stringent, whether the local policy or Federal policy (described below).

The small purchase method may be used for procurement of property or services exceeding the threshold for the micro-purchase method and up to the simplified acquisition threshold.<sup>21</sup> As of the publication date of this P&P, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. A procurement of more than \$250,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach.

Competition is sought through oral or written price quotations. The Subrecipient or non-profit Successful Applicant must document the receipt of an adequate number (usually at least three [3]) of price or rate quotations from qualified vendors. If an adequate number is not obtained, contact DED.

Documentation Requirements:

1. Identify in writing the item to be procured.
2. Solicit in writing, written quotes from at least three (3) qualified bidders. Verbal quotes, documented by the Subrecipient or non-profit Successful Applicant in writing, are acceptable for purchases of less than \$500.
3. Identify the lowest responsible bidder.
4. Notify each bidder in writing as to whether or not they are the apparent lowest responsible bidder.
5. Draft and execute a contract with the lowest responsible bidder.

## 7.3 COMPETITIVE SEALED BID (2 CFR § 200.320(B)(1))

**DED considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials.** This method must lend

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<sup>21</sup> See 2 CFR §200.320(a)(2). The “simplified acquisition threshold” means the dollar amount below which a subrecipient may purchase property or services using small purchase methods. Subrecipients adopt small purchase procedures to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by FAR at 48 CFR, § 2, subpart 2.1. The subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR § 2, subpart 2.1) for the simplified acquisition threshold.

itself to a firm, fixed-price contract (lump sum or unit price) where the selection can be made principally on the basis of price.

1. The Subrecipient or non-profit Successful Applicant must advertise the IFB in publications of general circulation, and solicit bids from an adequate number of known suppliers, providing them sufficient time to respond prior to bid opening;
2. The IFB must include complete and accurate specifications and pertinent attachments, and clearly define items or services needed, in sufficient detail for the bidders to properly respond;
3. Bids must be opened publicly at the time and place stated in the IFB;
4. The Subrecipient or non-profit Successful Applicant must receive at least two (2) or more responsible bids for each procurement transaction. If two (2) or more responsible bids are not obtained, contact DED;
5. If awarded, a firm-fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.<sup>22</sup> The Subrecipient or non-profit Successful Applicant can, however, decide not to make the award to any of the bidders; and
6. Any or all bids may be rejected if there is a sound documented reason.

## 7.4 PROPOSALS (2 CFR § 200.320(B)(2))

**DED considers this procurement method best suited to obtaining professional services.** This is normally conducted with more than one (1) 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 (e.g., consultants, project and service delivery). This method has two (2) sub-parts:

- Request for Proposals (RFP)
- Request for Qualifications (RFQ)

The review process for both statements of qualification and proposals in response to an RFQ or RFP, respectively, should be thorough, uniform, and well documented. The committee or board carrying out the review should, to the extent possible, include persons with technical skills. Reviewers should have no potential conflicts of interest with the firms or individuals under review (e.g., family relationships, close friendships, or business partnerships).

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<sup>22</sup> Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.

Procedures must ensure that all solicitations promote competition:<sup>23</sup>

- Identify all requirements which the offerors must fulfill;
- Identify all factors used in evaluating bids or proposals;<sup>24</sup> and
- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not contain features that unduly restrict competition.<sup>25</sup>

RFPs and RFQs require the following:<sup>26</sup>

1. RFPs or RFQs must be publicized and identify all evaluation factors and their relative importance. For example: RFP evaluation criteria may include technical expertise of the firm and its personnel (25 points); past record of performance on projects of similar nature, including quality of work and cost control (25 points); familiarity with CDBG-DR program (20 points); capacity of firm to perform the work within time schedule (20 points); and the nature and extent of services proposed versus estimated fees (10 points); etc. In general, Subrecipients and non-profit Successful Applicants should use the RFP process for professional planning services.
2. Proposals must be solicited from an adequate number of qualified sources (at least three [3]), which means that the individuals or entities meet certification, registration, or other professional qualifiers for service performance;<sup>27</sup>
3. Subrecipients and non-profit Successful Applicants must have a written method for conducting technical evaluations of the RFP or RFQ proposals received according to the criteria specified in the RFP or RFQ and for making selections;
4. Awards must be made to the responsible offeror whose proposal is most advantageous to the program, with price and other specified factors considered as appropriate; and
5. Subrecipients and non-profit Successful Applicants may use competitive proposal procedures for qualification-based procurement of Architectural/Engineering (A/E)

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<sup>23</sup> 2 CFR § 200.319.

<sup>24</sup> 2 CFR §200.319(d)(2).

<sup>25</sup> 2 CFR §200.319(d)(1). The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.

<sup>26</sup> 2 CFR §200.320(b)(2).

<sup>27</sup> Any response to publicized RFPs must be considered to the maximum extent practical.

professional services, whereby offeror's qualifications are evaluated, and the most qualified offeror is selected subject to negotiation of fair and reasonable compensation. Price is not used as a selection factor for RFQs.

The **RFQ** method, where price is not used as a selection factor, can only be used in procurement of A/E services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort. (NOTE: this does not include professional planning services).

In addition to publicly advertising in the local newspaper or journal of record, the Subrecipient or non-profit Successful Applicant must also publicly advertise in at least one (1) other newspaper that is widely distributed in its region of the state. The Subrecipient or non-profit Successful Applicant evaluates the firms responding and may conduct interviews with one (1) or more of the firms responding and select a consultant. The Subrecipient or non-profit Successful Applicant then negotiates a contract with terms and conditions to its satisfaction. The Subrecipient or non-profit Successful Applicant review committee should score all proposals received in accordance with the terms described and published with the RFP or RFQ, depending on the method used. DED recommends sending RFPs to firms serving the Subrecipient's or non-profit Successful Applicant's region of the State; however, proximity is not an adequate reason for selection and the Subrecipient or non-profit Successful Applicant must take measures to ensure fair and open competition.

## 7.4.1 COMPETITIVE PROPOSALS EVALUATION CRITERIA

The Competitive Proposals Evaluation Criteria consists of the following:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- Past record of performance on contracts, including quality of work, timeliness, and cost control.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.

**NOTE:** Subrecipients and non-profit Successful Applicants may assign weights to each criteria to indicate relative importance. If interviews are required at any time in the review process, it must be expressly stated in the RFP. Additionally, Subrecipients and non-profit Successful Applicants should confirm that no conflicts of interest exist (see section 6.2, **Conflict of Interest**).

## 7.4.2 REQUEST FOR PROPOSALS (RFP)

1. RFPs must clearly and accurately state the technical requirements for the goods and services required.
2. The RFP should specify the scope of services and the type of contract to be provided, cost reimbursement (i.e., cost plus fixed fee) or fixed price. Not allowable are cost plus a percentage of cost contracts.
3. The RFP also should specify the cost and pricing data required to support the proposed cost, anticipated start and completion dates, and ranking and evaluation criteria. Subrecipients or non-profit Successful Applicants shall make every effort to make available pertinent materials, such as reports, maps and site plans to assist the offerors in preparing proposals. For complicated projects, Subrecipients or non-profit Successful Applicants may wish to conduct a pre-bid conference to discuss the project, describe available materials, and explain relevant CDBG-DR contract regulations.
4. The Subrecipient or non-profit Successful Applicants must publicize the RFP, identify all evaluation factors and their relative importance, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;
5. Proposals must be solicited from an adequate number of qualified offerors, consistent with the nature and requirements of the procurement;
6. The Subrecipient and non-profit Successful Applicant must conduct a technical evaluation of the submitted proposals to identify the responsible offerors;
7. As necessary, the Subrecipient and non-profit Successful Applicant must conduct negotiations with those offerors deemed responsive and responsible, and those that fall within a competitive price range, based on the Subrecipient's or non-profit Successful Applicant's evaluation of the offerors' pricing and technical proposals. After negotiations, these offerors may be given the opportunity to submit a "best and final" offer; and
8. The Subrecipient or non-profit Successful Applicant must award the contract to the most responsive and responsible offeror after price and other factors are considered through scoring the proposals or "best and final" offers according to predetermined evaluation criteria. The successful offeror must clearly be the most advantageous source of the goods and services.

## 7.4.3 REQUEST FOR QUALIFICATIONS (RFQ)

For procurement involving A/E services, the Subrecipient or non-profit Successful Applicant may use the RFQ competitive proposal procedure whereby offerors' qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as a selection factor. The Subrecipient or non-profit

Successful Applicant should review and rank every statement received, and either contact the first two (2) or three (3) choices to request a proposal covering the scope of services and estimated costs or select the top firm and begin negotiations.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, repeat this process with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The Subrecipient or non-profit Successful Applicant must take care to document the basis for its determination of the most qualified offeror and the reasonableness of the contract price. This qualifications-based approach to the competitive proposal method may only be used in the procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.<sup>28</sup>

This means that:

- Use qualifications-based procurement only for A/E services. In no other instances is issuance of an RFQ appropriate.
- Evaluation of offerors' qualifications culminates in selection of the most qualified offeror, subject to negotiation of fair and reasonable compensation.
- An RFQ is not allowable to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

In addition, the Federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by Federal statutes, due to the restrictions on open competition, which result. However, in procuring A/E services, geographic location is permitted as a selection criterion provided this criterion leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.<sup>29</sup>

## 7.5 NON-COMPETITIVE PROPOSALS/SOLE SOURCE (2 CFR § 200.320(C))

**This method may be used only under very limited circumstances and the Subrecipient or non-profit Successful Applicant must obtain DED approval before using this method.**

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<sup>28</sup> 2 CFR §200.320(b)(2).

<sup>29</sup> 2 CFR §200.319(c).

When requesting permission to use this method, the Subrecipient or non-profit Successful Applicant will have to show that another method of procurement was not feasible because:

- The aggregate dollar amount for the acquisition of property or services does not exceed the micro-purchase threshold;<sup>30</sup>
- The item or service was only available from a single source;
- A public emergency or condition requiring urgency existed which did not permit a delay resulting from publicizing a competitive solicitation; or
- Competition was determined to be inadequate after solicitation of proposals from a number of sources.

In some cases, the Subrecipient or non-profit Successful Applicant selects one (1) of the other methods of procurement listed above which does not ultimately solicit an adequate number of responses. In such instances where the Subrecipient or non-profit Successful Applicant receives inadequate response, this may trigger 2 CFR § 200.320(c)(5). After solicitation of a number of sources, where competition is determined inadequate, it may be appropriate to convert the process into procurement by noncompetitive proposal. **Prior to awarding a contract under these conditions, the Subrecipient or non-profit Successful Applicant must consult with and obtain DED approval.**

## 7.6 SYSTEM FOR AWARDS MANAGEMENT (SAM) VERIFICATION

SAM is an official US government system that was created to provide a comprehensive list of individuals and entities debarred from contracting with the Federal government. Subrecipients and non-profit Successful Applicants are responsible for maintaining SAM verification. Based on the entity's relationship to the CDBG-DR-funded project, there are two primary (2) types of SAM verification. For both instances, the Subrecipient and non-profit Successful Applicant must maintain documentation as to initial verification and confirm verification prior to awarding a contract and charging any costs to the award.

1. **Subrecipient and Non-Profit Successful Applicant:** Subrecipients, non-profit Successful Applicants, and vendors/contractors (e.g. businesses participating in a commercial rehabilitation program or property owner participating in a housing rehabilitation program that is not an individual) must have a unique entity identifier, currently the DUNS number, active SAM registry, and have no active exclusions.

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<sup>30</sup> See previous section for additional information regarding the micro-purchase threshold.

- 2. Contractors, subcontractors, suppliers, and firms providing professional services (e.g. development districts, engineers, architects, planners, etc.):** SAM verification of contractors, subcontractors, suppliers, and firms providing professional services consists of confirmation the entity is not debarred and does not have an active exclusion.

To be eligible for a CDBG-DR award, the Subrecipient or non-profit Successful Applicant must meet the requirements listed for item 1 above. SAM requirements are again verified prior to processing drawdowns and during performance monitoring.

## 7.7 TIMING OF CONTRACT EXECUTION

After a Subrecipient has a signed Subrecipient Agreement or DED has signed a contract with a non-profit Successful Applicant, the Subrecipient or non-profit Successful Applicant may enter into contracts to support program or project delivery. (See the **Financial Management Policies & Procedures** for discussion on when and what cost types can be incurred.) Entering into all other contracts associated with the project must occur after ROF. In other words, the Subrecipient or non-profit Successful Applicant would enter into construction management, housing management, professional services, and construction contracts after ROF. Procurement process(es) may occur prior; however, certain contracts may not be entered into prior to HUD issuance of environmental clearance and ROF. Conditional contracts are discouraged.

## 7.8 BONDING AND INSURANCE

For construction or facility improvement contracts or subcontracts exceeding \$250,000,<sup>31</sup> the Subrecipient or non-profit Successful Applicant must ensure that its procurement meets the minimum Federal requirements<sup>32</sup> for bid guarantees, performance bonds, and payment bonds. These include:

- 1. A bid guarantee** from each bidder equivalent to 5% of the bid price. The bid guarantee must be a firm commitment in the form of a bid bond, certified check or other negotiable instrument as assurance that the bidder is prepared to execute a contract within the time specified for the bid amount;
- 2. A performance bond** from the contractor for 100% of the contract price to secure the contractor's fulfillment of all obligations under the contract;<sup>33</sup> and

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<sup>31</sup> \$250,000 is the current Simplified Acquisition Threshold.

<sup>32</sup> 2 CFR § 200.326.

<sup>33</sup> A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

3. A **payment bond** from the contractor for 100% of the contract price, to assure payment of all persons supplying labor and material under the contract.

## 7.9 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, SECTION 3 BUSINESS CONCERNS, AND LABOR SURPLUS AREA FIRMS

Subrecipients or non-profit Successful Applicants must take affirmative steps to use minority businesses, women's business enterprises, or labor surplus area firms when possible.<sup>34</sup> For example, the Subrecipient or non-profit Successful Applicant should:<sup>35</sup>

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assure that such businesses are solicited whenever they are potential sources;
3. Divide total procurement requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of such businesses;
4. Establish delivery schedules, where the requirement permits, which encourage participation by such businesses;
5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Require prime contractors, if subcontracts are to be let, to take affirmative steps to select such firms.

Subrecipients and non-profit Successful Applicants are required to comply with Section 3 of the Housing and Community Development Act of 1968. Section 3 requires, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, the awarding of contracts in connection with Section 3 projects to eligible business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.<sup>36</sup> For additional information regarding Section 3, see **Section 3 Policies and Procedures**.

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<sup>34</sup> 2 CFR § 200.321(a).

<sup>35</sup> 2 CFR § 200.321(b).

<sup>36</sup> 24 CFR §75.19.

## 8 BEST PRACTICES FOR PROCUREMENT

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DED guidance is a supplement to Federal and State requirements enumerated and discussed in brief within this P&P. Best practices are included here to encourage successful implementation. The Subrecipient or non-profit Successful Applicant is responsible for understanding and complying with Federal or State requirements located within the original source. In some instances, DED may require a more stringent approach in which case those requirements are detailed. DED will be available to provide support and technical assistance to Subrecipients and non-profit Successful Applicants to help ensure compliant and successful procurement practices.

Where the procurement method requires publication, the advertisement must be such as to inform interested parties and be available to the public (i.e., publicly solicited). Use of listing services requiring membership should not be solely relied upon and do not meet the intent of publication.

Where the Subrecipient or non-profit Successful Applicant received an inadequate number of responses, it is necessary to consult with DED to determine best practice prior to awarding a contract. In some instances, it may be appropriate to reissue procurement materials. DED can provide technical assistance to the Subrecipient or non-profit Successful Applicant to determine the best way forward.

Carry out SAM verification for all offerors responding to a procurement process at the time of submission and prior to negotiations to ensure that the offerors are not excluded from receiving Federal funds.

### 8.1 COMPETITIVE PROPOSALS

Be sure to score all proposals received in accordance with the terms described and published with the RFP or RFQ, depending on the method used. A response to an RFP/RFQ should not be confused with competitive bid. A bid is an estimate of cost in response to detailed specifications. A response to an RFP/RFQ in the competitive proposal process is a description of how a consultant proposes to approach solving a Subrecipient's or non-profit Successful Applicant's problem. Competitive proposals refer to the comparison of qualifications and may include fees where required or deemed appropriate. However, the main focus in selecting the consultant is to evaluate the content of the proposal and the consultant's qualifications and demonstrated competence.

### 8.2 REQUEST REFERENCES

Any time a consultant solicits a Subrecipient's or non-profit Successful Applicant's business, the Subrecipient or non-profit Successful Applicant should always check references prior to contracting with them. Request a list of prior clients, showing the organization's name, address, phone number and contact person, as well as a brief description of the work performed. A list of

the most recent clients is preferable (especially previous CDBG or CDBG-DR projects). Contact each reference. Some useful questions might be:

- Were you satisfied with the work?
- Was it performed on time?
- Was the consultant knowledgeable about the program?
- Were the tasks or work products prepared by the consultant useful?
- Did the consultant work with local staff to develop local capacity?
- Were the costs or charges reasonable? Did they stay within their original budget?
- Would you hire them again?

In addition, Subrecipients or non-profit Successful Applicants should check to see if the work done for these clients is similar to what the Subrecipient or non-profit Successful Applicant wants the consultant to do. The ability to write a grant application does not mean the same consultant has the capability to assist with managing a grant.

Sometimes the firm a Subrecipient or non-profit Successful Applicant is interested in will be a new firm with few, if any, client references. New, small firms can be just as good as well established, large firms, so instead of asking for client references, the Subrecipient or non-profit Successful Applicant could ask for past employer references.

Checking references prior to contracting is the most important action you can take to avoid becoming involved with a less than satisfactory firm.

## **8.3 INVOLVE LOCAL STAFF**

Whenever a governmental Subrecipient retains a consultant to assist with preparing a grant application or managing a CDBG-DR project, make sure that someone from the city or county works with the consultant and understands the community's application or the management issues involved. The Subrecipient should have a local staff person become familiar with the regulations for the CDBG-DR program and work closely with the consultant in developing the application or managing the project. A consultant is a technical resource.

## 9 CONTRACT MANAGEMENT

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### 9.1 CONTRACT LANGUAGE

All contracts require certain language to be included; however construction contracts require additional provisions to be included. **Appendix B: Sample Professional Service/Consultant Contract Provisions** and **Appendix C: Sample Construction Contract Provisions** outline the language to be included in the respective contracts between Subrecipients and non-profit Successful Applicants and their contractors and vendors.

For further information on contract information, see **Appendix D: Procurement Procedures and Code of Conduct**. For additional information on wage requirements on construction projects, see the **Davis-Bacon Policies and Procedures**.

### 9.2 CONTRACT FILE

The Subrecipient or non-profit Successful Applicant must establish a contract file and monitor the contract to assure that the contract is completed in a satisfactory and timely manner. The contract file must contain:

- Description of method used to select consultants and related documentation;
- Qualification statements, RFP, and proposal(s) received;
- Any documentation used to evaluate respondents, if applicable;
- SAM verification (no active exclusions/debarment);
- Negotiation methods;
- Cost and pricing data;
- Contract for services;
- Records of partial payments and supporting documentation (in financial management files); and
- Contract amendments, if any, and rationale for amendment.

## 10 CONTRACT COMPLETION AND CLOSEOUT

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All work must be completed, including delivery of any associated reports and documentation, before a vendor/contractor submits their final invoice. The vendor or contractor's final invoice must be submitted within 90 days of work completion. DED will not sign-off or approve a final payment to a Subrecipient or non-profit Successful Applicant or project closure if the project has outstanding labor issues (see **Davis-Bacon Policies & Procedures** and **Section 3 Policies & Procedures** for additional information). It must be ensured that the Subrecipient or non-profit Successful Applicant has all payrolls, restitution payments, HUD illls and/or discrepancies resolved prior to close out of any CDBG-DR project. All funding for a CDBG-DR project must be expended before the expiration date of the Subrecipient Agreement or contract with non-profit Successful Applicant.

## 11 REPORTING AND RECORDKEEPING

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Subrecipients and non-profit Successful Applicants should document procurement process, bids received, contractor selection, and contract progress or status as described herein and in the Subrecipient Agreement or Successful Applicant contract. See **Recordkeeping and Data Management Policies & Procedures** for additional information.

## 12 APPENDIX LIST

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The following appendices reflect tools and templates that will be developed throughout the course of program launch and implementation to support Subrecipients and non-profit Successful Applicants with carrying out the procedures set forth in this P&P. Items marked in gray indicate that the tool or template is still under development at the time of this document's release. In many cases, a similar form exists under the regular CDBG program and will be adapted for CDBG-DR.

These tools do not reflect any additional policy or procedural element that is not described in the main P&P document. They will be added as appendices to this P&P for convenience of use by relevant stakeholders.

Appendix A: Text of 2 CFR §§ 200.318 through 200.327 and Appendix II to Part 200

Appendix B: Sample Professional Service/Consultant Contract Provisions

Appendix C: Sample Construction Contract Provisions

Appendix D: Procurement Procedures and Code of Conduct