

Procurement and Contracting for CDBG-DR Subrecipients

Resilient Communities Program



DIVISION OF
Disaster Recovery
& Mitigation

Building stronger communities



Agenda

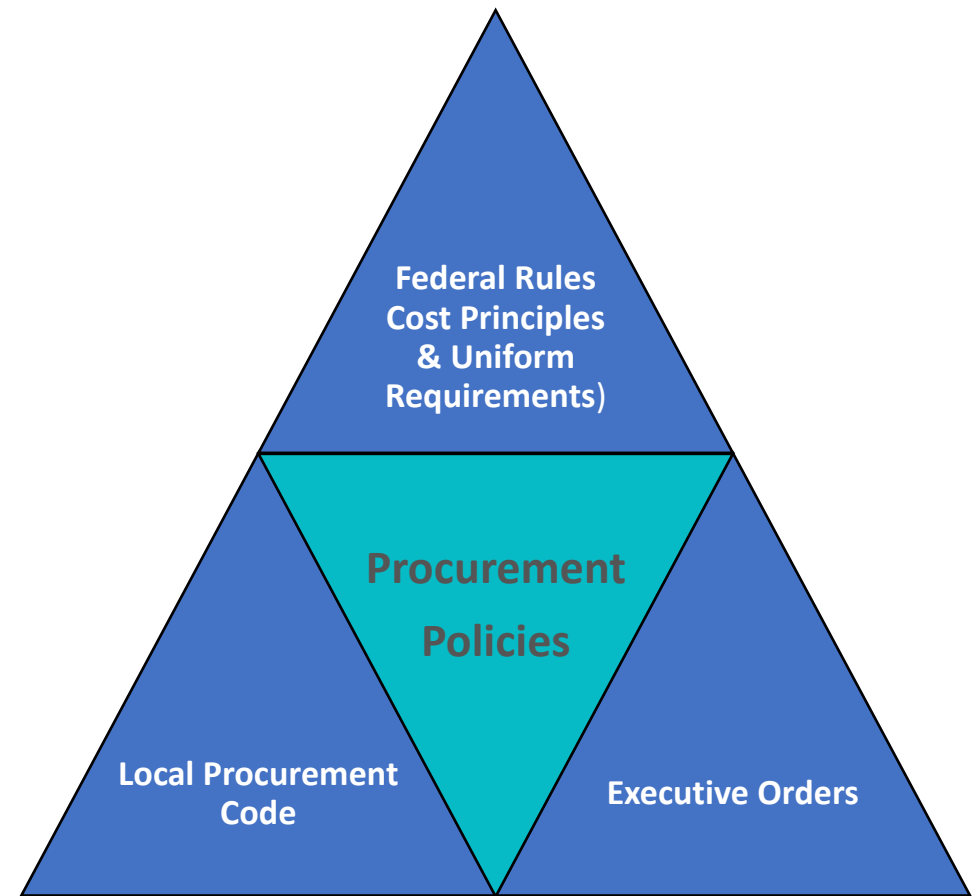
- Procurement Requirements
- Methods of Procurement
- Cost or Price Analysis
- Formal Procurements
- Non-Competitive Procurements
- Change Orders and Modifications
- Common Procurement Issues
- Pre- and Post-Award Procurements
- Record-keeping and Documentation
- Contracting Requirements



Procurement Requirements

Procurement Policy Requirements

- Subrecipients must adopt the Subrecipient Manual **Policies and Procedures** related to procurement and contracting to ensure CDBG-DR funds are used in an efficient and economical manner.
- Use must comply with:
 - Applicable Federal regulations and requirements
 - State code/County code
 - Executive Orders



Subrecipient Manual

- DCA is providing all subrecipients of CDBG-DR infrastructure funding a **Subrecipient Manual** which details policies and requirements for implementing CDBG-DR infrastructure programs.
- The chapters in the manual provide additional information and resources and should be first point of reference.
- All subrecipients are expected to review and be familiar with the Subrecipient Manual chapters in order to effectively and compliantly implement CDBG-DR programs.

Procurement Policy Requirements

- Subrecipients must follow 2 CFR 200.318 through 2 CFR 200.327.

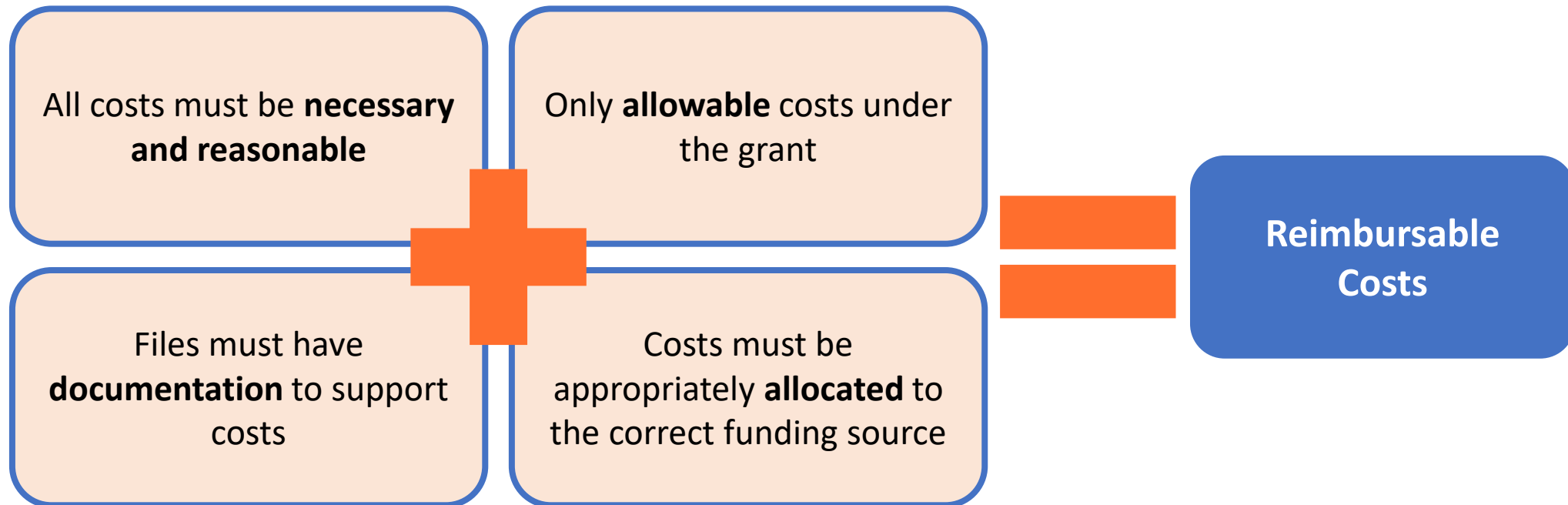
- § 200.318 General procurement standards.
- § 200.319 Competition.
- § 200.320 Procurement methods.
- § 200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.
- § 200.322 Domestic preferences for procurements.
- § 200.323 Procurement of recovered materials.
- § 200.324 Contract cost and price.
- § 200.325 Federal agency or pass-through entity review.
- § 200.326 Bonding requirements.
- § 200.327 Contract provisions.

Federal vs. Local Requirements

- Subrecipients are required to comply with the **most restrictive** procurement requirements when using CDBG-DR funds.
 - If local procurement code is more restrictive than federal, local requirements must be followed.

Key Principles of Compliant Procurements

- **RADAR:** All procurements should be **R**easonable, **A**llowable, **D**ocumented, and **A**llocable; then they are **R**eimbursable.



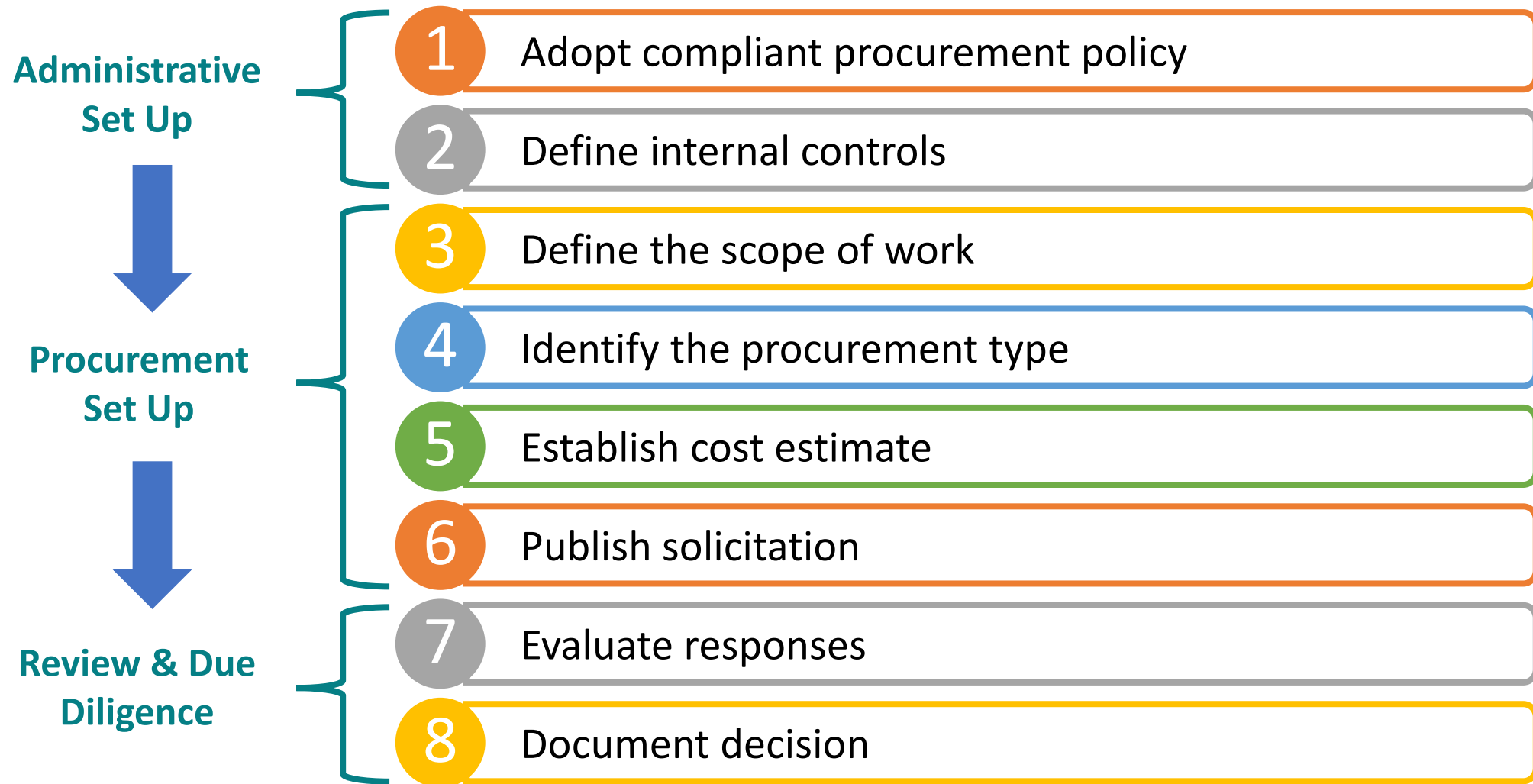
Remove impediments to fair and open competition.

- Provide an opportunity for all eligible and interested businesses to respond to the procurement.
 - The request for submissions is made public and advertised.
 - Equal information is made available to all interested bidders.
 - Do not require unnecessary experience and excessive bonding.
 - Do not offer non-competitive contracts to current contractors.
 - Do not specify a “brand name” of a product.
 - Do not add a geographical preference in the solicitation.
 - Contractors that have helped to develop or draft specifications, scope, qualifications, cost estimates, invitations to bid, or other factors that would give them an unfair advantage in the bidding process must be excluded from participation in the solicitation.
-

Conflict of Interest

- **Written Standards of Conduct:**
 - Required for all subrecipients.
 - Governs actions of employees in contract selection, award, and administration.
- **Prohibited Participation:**
 - No involvement in contracts by those with real or apparent conflicts of interest.
 - Includes employees, officers, agents, and board members.
- **Definition of Conflict of Interest:**
 - Financial or other interest in, or tangible benefit from, an entity considered for a contract.
 - Applies to the individual, their immediate family, partner, or associated organizations.
- **Prohibition on Gratuities:**
 - No solicitation or acceptance of gratuities, favors, or anything of monetary value from contractors.
 - Exceptions for nominal value items or insubstantial financial interests.
- **Disciplinary Actions:**
 - Standards must include disciplinary actions for violations.

Procurement Process



Cost or Price Analysis

What is Price vs Cost Analysis?

- **Price Analysis** – Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., total sum) without analyzing any of the separate cost elements.
- **Cost Analysis** – Cost analysis is the evaluation of the separate elements (e.g., labor, materials, profit, etc.) that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirements and ultimately, reasonable.
- **Independent Cost Estimate (ICE)** is required for each procurement action above the simplified acquisition threshold and is prepared before solicitation (or modification/change order).
 - ICEs can be done by qualified staff, 3rd party consultants, or examination of existing price and product catalogs.
- **Cost or Price Analysis** is required once responses are submitted when procuring goods or services with federal funds in excess of the Simplified Acquisition Threshold.

Methods of Procurement



5 Basic Methods of Procurement

1. Micro-purchase
2. Small Purchases
3. Sealed Bid
4. Competitive Proposals
5. Non-competitive Proposals (Sole Source)

Informal Procurement: Micro-Purchase

- **Micro-purchases** refer to the acquisition of supplies or services valued **equal to or less than \$10,000**.
- Procurements valued equal to or less than \$10,000 can be solicited without competitive price or rate quotations.
- Subrecipients must still consider whether the **price is reasonable** based on research, experience, purchase history or other information and documents the files accordingly.

Informal Procurement: Small Purchase

- Small purchases refer to the acquisition of property or services when the aggregate dollar amount is greater than the micro-purchase threshold (\$10,000) but **does not exceed the simplified acquisition threshold (SAT) of \$250,000.**
- Price or rate quotations must be obtained from an adequate number of qualified sources; Preferably at least 3 quotes.
- **Recommendation:** It is recommended that all professional services, including those under the SAT, are procured competitively in order to ensure the subrecipient is receiving a highly qualified provider that is cost reasonable.

Informal Procurements: Summary

Procurement Type	Cost or Price Analysis	Solicitation Method	Applications	Dollar Thresholds
Micro-Purchases 2 CFR 200.320(a)(1)	Price Analysis	No solicitation required	<ul style="list-style-type: none"> • Supplies • Produced items • Single-task service 	<ul style="list-style-type: none"> • Under \$2,000 for construction • Under \$10,000 for all other purchases
Small Purchase 2 CFR 200.320(a)(2)	Price Analysis	<ul style="list-style-type: none"> • Quotations • Submitted Bids 	<ul style="list-style-type: none"> • Produced Items • Single-task Service • Supplies 	<ul style="list-style-type: none"> • \$250,000 or less for produced items • \$250,000 or less for non-construction services

Knowledge Check

Scenario: You want to use some of your CDBG-DR grant funding to pay for a grant administration consultant who will support admin activities. You do a cost estimate, and you estimate these services will result in a contract around \$75,000. This falls under the Simplified Acquisition Threshold, however your local procurement policy requires all purchases over \$50,000 to go out for a competitive RFP process.

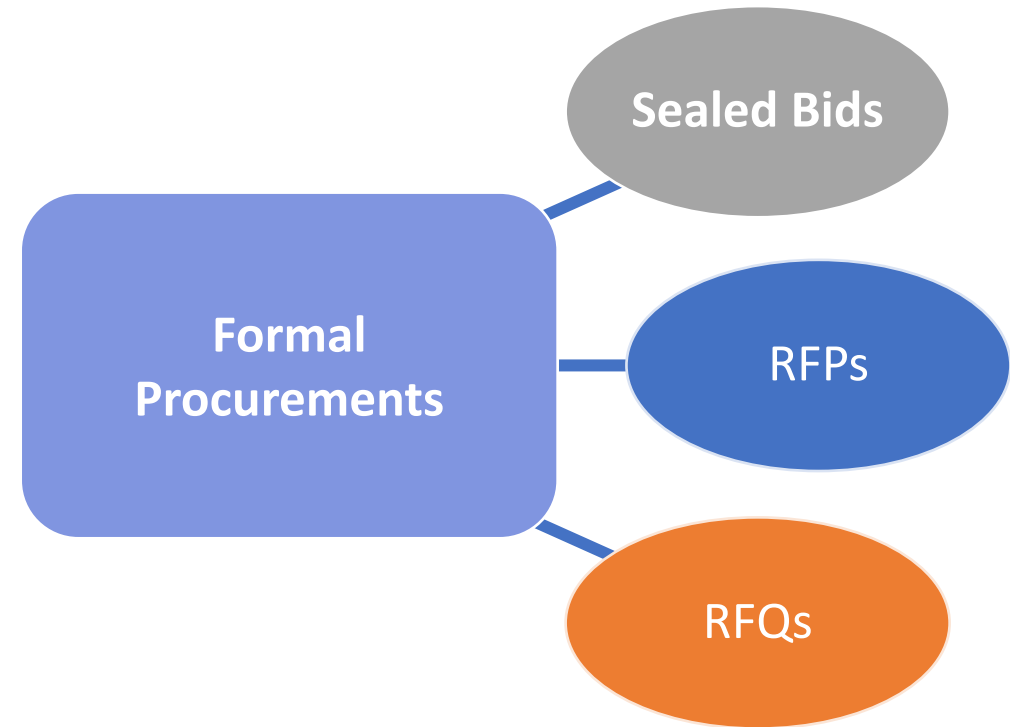
Question: What procurement process will you use to solicit grant administration services?

- a) This is a small purchase under federal regulations, so you will solicit a sufficient number of quotes to select a contractor without putting out a formal RFP.
- b) You will follow the most restrictive procurement policy, which is the local policy, and put this solicitation out as an RFP per your local policy.

Formal Procurements

Formal Procurements

When the value of the procurement for property or services under a federal financial assistance award **exceeds the SAT (\$250k)**, formal procurement methods are required.



Formal Procurements

Sealed bids

Sealed bids are publicly solicited, and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

Requests for Proposals (RFP)

RFPs are publicly solicited, and either a fixed price or cost-reimbursement type contract is awarded. Proposals must be solicited from an adequate number of qualified offerors. An independent cost estimate must be provided in advance of review of bids. Subrecipients must follow a written method for conducting technical evaluations of the proposals received and making selections.

Request for Qualifications (RFQ)

RFQs are publicly solicited for architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation.

Sealed Bids

In order for sealed bidding to be feasible, the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- The sealed bid method is the required method for procuring CDBG-DR-funded construction work.

- RFP

- Used for professional service such as Grant or Program Administration, Case Management, Legal Services, and Title Services
- **Must include:**
 - Price
 - Method of Implementation
 - Experience
 - Capacity

- RFQ

- Used for Engineering and Architect services typically
- **Must include:**
 - Qualifications
 - Experience
 - Capacity

Formal Procurements: Summary

Procurement Type	Cost or Price Analysis	Solicitation Method	Applications	Dollar Thresholds
Sealed Bid 2 CFR 200.320(b)(1)	<ul style="list-style-type: none"> • Price Analysis • Cost Analysis 	<ul style="list-style-type: none"> • Submitted Bids 	<ul style="list-style-type: none"> • Construction Items • Produced or Designed Items 	<ul style="list-style-type: none"> • All construction contracts including less than \$250,000 • Produced or designed items over \$250,000
Proposals (RFP or RFQ) 2 CFR 200.320(b)(2)	<ul style="list-style-type: none"> • Price Analysis • Cost Analysis 	<ul style="list-style-type: none"> • Submitted proposals 	RFPs <ul style="list-style-type: none"> • Professional Services • Multi-task Services • Designed Items RFQs <ul style="list-style-type: none"> • Architectural and/or Engineering 	<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

Detailed Scope of Work or Services

Every procurement action must include a detailed scope of work or services.

- All procurements require a specific scope of work or description of services to be procured. There must be sufficient detail to allow for an adequate response, and to accurately perform an independent cost estimate.
- All solicitations must contain the criteria on which the responses will be scored. The scope of work should be part of that for formal procurements.

Knowledge Check

Scenario: Your city has a longstanding contract with a firm that has drafted a project scope, design specs, and other materials that are being integrated in the city's upcoming request for bids for it's CDBG-DR infrastructure project.

Question: Is the firm that prepared the project scope and design specs allowed to bid on the upcoming project?

☐ Yes

☒ No

Contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. A contractor with knowledge of forthcoming a bid solicitation, gained through a role in preparing the solicitation, has an unfair advantage over other bidders in terms of time to prepare a response and familiarity with the associated specifications and requirements with the solicitation.

Non-Competitive Procurements

Non-Competitive Procurements

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

- ☑ The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.
- ☑ The item is available only from a single source.
- ☑ The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.
- ☑ The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity.
- ☑ After solicitation of several sources, competition is determined to be inadequate.

Non-Competitive Procurements

Independent cost estimates are still required for noncompetitive procurements and the procurement files must be well documented with the rationale for selecting this type of procurement.



Get clarification and required prior approval from DCA about any noncompetitive procurement considerations.

Non-Competitive Procurement: Summary

Procurement Type	Cost or Price Analysis	Solicitation Method	Applications	Dollar Thresholds
Noncompetitive Procurements 2 CFR 200.320(c)	<ul style="list-style-type: none">• Pre-Bid Independent Cost analysis	<ul style="list-style-type: none">• Submitted proposals	<ul style="list-style-type: none">• Produced Items• Single-task Services• Professional Services• Multi-task Services• Designed Items	<ul style="list-style-type: none">• No threshold,• <u>BUT</u> may only be used when other methods are not feasible

Knowledge Check

Scenario: Your organization needs to procure a contractor to repair and make resiliency updates to your local water treatment plant. One of the potential vendors is a long-time partner who has always provided excellent service.

Question: How should you handle the procurement process to ensure full and open competition as required by 2 CFR 200?

- a) Reach out to the vendor for a cost estimate. If the cost is reasonable, award the vendor a contract to complete the work.
- b) Write a memo for your procurement file that justifies making a sole source award of the contract to this vendor.
- c) Put the contract out to bid and allow participation by all qualified potential vendors. Review bids and award to the lowest responsible bidder.

Common Procurement Issues

Common Findings or Concerns

- Prohibited use of cost-plus percentage of cost contracting (subrecipients should be entering into fixed-price contracts for competitive procurements)
- Failure to prepare ICE prior to receiving proposals
- Excessive use of change orders or contract modifications, along with failure to conduct required cost and price analyses.
- Inclusion of noncompetitive practices/requirements in procurement documents (e.g., geographic preference, minimal public advertisement, etc.)
- Failure to have an adequate contract administration system to track the history of each procurement action
- Adding new or additional scope to existing or expired contracts



Knowledge Check

Scenario: Local procurement policy allows the municipality to procure specialized professional services (such as design or A/E firms) without a competitive process. The municipality needs specialized design services for its CDBG-DR grant.

Question: Can the municipality utilize its local procurement policy to procure a firm without a competitive process (as a sole source procurement)?

☐ YES

☒ NO

No, you must use the most restrictive policy which in this case is the federal requirement on sole source procurements that limits its use unless under very specific circumstances, which do not include specialized professional services.

Pre- and Post-Award Procurements

Compliant Procurement

- While pre-award costs are not reimbursable with CDBG-DR funds, a subrecipient may need to contract with a vendor prior to award execution.
 - For example: A municipality solicits the services of a design firm to complete the required 30% design pre-award and the complete 100% of design post-award.
- **Subrecipient must alert DCA to any procurement actions that are planned prior to environmental review completion and award execution so DCA can review for compliance and ensure no “choice limiting actions” are made.**
- These firms must be solicited and contracted in compliance with CDBG-DR and federal requirements in order to be reimbursed with CDBG-DR funds post award.

Change Orders and Modifications

Scope of Work

- Substantial changes to scope of work generally require new procurement



Cost and Budget

- Change orders or modifications above the Simplified Acquisition Threshold require a cost analysis.
- Must consider impacts to the overall grant budget
- Change orders and modifications must still be reasonable and necessary
- Cost overruns may be borne by the subrecipient

Recordkeeping and Documentation

Procurement Checklist

- Subrecipients must maintain a procurement file for every procurement action taken with CDBG-DR funds. The procurement file should tell a clear story of the **method of procurement selected, steps for selection, and compliance with all procurement requirements.**
- Subrecipients will utilize the **Procurement Checklist** provided by DCA to document compliant procurements and procurement records.
- The checklist will be used to review solicitations **prior to release** for compliance with federal and DCA program requirements AND **after an award** to ensure procurement files are complete and well-documented for monitoring purposes.

Instructions: Do not proceed unless you have received environmental clearance. Use the following checklist to review solicitations prior to release for compliance with federal and DCA program requirements. This checklist should also be used after an award to ensure procurement files are complete and well-documented for monitoring purposes. Start by filling out the solicitation information below, highlighted in blue:

Subrecipient Name	Solicitation Type	Construction?
(Type Subrecipient Name Here)	Select From Dropdown	Select from Dropdown
Solicitation Name	Solicitation Date:	Procurement Status
(Type Solicitation Name Here)	(MM/DD/YYYY)	Select from Dropdown

Instructions: Only fill out columns C and D below. In column D (Notes), you must indicate where in the procurement file, bid package, and/or RFP the actual requirement can be found. Include page numbers when applicable/available.

Description of Requirement	Description of Required Documentation	Documentation Present? (Yes, No, N/A)	Notes	Reference Citation
General Requirements and Open Competition				
No actions taken during the procurement process limit full and open competition or give an unfair competitive advantage to any contractor.	Approved procurement policy and complete procurement files	Select from Dropdown		200.319 Subrecipient Manual, Overall Procurement Requirements
Does the subrecipient have written procurement procedures that ensure all solicitations: 1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, and 2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals	Approved procurement policy	Select from Dropdown		200.319(d)
Does the subrecipient have standards of conduct covering conflicts of interest for all employees, officers, agents, and other individuals involved in procurement.	Approved procurement policy and/or conflict of interest policy.	Select from Dropdown		200.318(c) Subrecipient Manual, Conflicts of Interest
Procurement Planning				
Document the method of procurement selected and justify the choice (e.g., micro-purchase, small purchase, competitive sealed bid, competitive proposal, non-competitive proposal); include rationale for method of procurement, selection of contract type, and basis for the contract price.	Memo, note to file, or other document outlining decision for method of procurement.	Select from Dropdown		200.320; 200.318(i) Subrecipient Manual, Methods of Procurement, Recordkeeping
Methods of Procurement				
Micro-Purchase (<\$10,000)	Record determination for method of procurement in a memo or file to procurement record	Select from Dropdown		
Ensure price is reasonable without soliciting competitive quotations	Memo, note to file, or other document justifying price reasonableness. Ex - show market prices for other, similar items.	Select from Dropdown		200.320(a)(1) Subrecipient Manual, Methods of Procurement
Distribute micro-purchases equitably among qualified suppliers	Memo or note to file if purchase of similar goods or services occurs multiple times.	Select from Dropdown		200.320(a)(1)(i) Subrecipient Manual, Methods of Procurement
Small Purchase (\$10,000-\$249,999)	Record determination for method of procurement in a memo or file to procurement record	Select from Dropdown		
Solicit price or rate quotations from an adequate number of qualified sources (at least three)	Documentation of price/rate quotations.	Select from Dropdown		200.320(a)(2)
Sealed Bids	Record determination for method of procurement in a memo or file to procurement record	Select from Dropdown		200.320(b)(1)
Is a complete, adequate, and realistic specification or purchase description available for bidders?	Bid package	Select from Dropdown		
Are two or more responsible bidders willing and able to				

Contracting Requirements

Contract Contents

- **General Administrative Provisions** - Including effective date of the contract, names and addresses of the parties to the contract, reference to the authority of the local unit of government to enter into the contract, conditions and terms for violation or breach of the contract, and procedures for contract amendment.
- **Period of Performance** - Including a start and end date to the contract.
- **Scope of Services** - Including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance, performance requirements, and specification of materials.
- **Method of Compensation** - Including fee or payment schedules, retainage, rates and maximum amounts payable. All contracts using CDBG-DR funds must have a not-to-exceed clause.
- **Terms and Conditions** - Consistency of the contract with the requirements of the grant agreement between DCA and the subrecipient. The relevant terms and conditions of the grant agreement between DCA and the subrecipient should be reflected in subsequent contracts between the subrecipient and their contractors. A liquidated damages provision must be included in all contracts except general management contracts.
- **Special Conditions/Specific Provisions** - Inclusion of specific contract provisions may be required by state and federal law.

Appendix II to Part 200: Required Contract Provisions

(A) Remedies

(B) Termination

(C) Equal Employment Opportunity

(D) Davis-Bacon Act & Copeland “Anti-Kickback” Act

(E) Contract Work Hours and Safety Standards Act

(F) Rights to Inventions

(G) Clean Air Act & Water Pollution Control Act

(H) Debarment and Suspension

(I) Byrd Anti-Lobbying Amendment

(J) Procurement of Recovered Materials

(K) Prohibition on Certain Telecommunications

(L) Domestic Preference

Section 3

All contracts that trigger Section 3 must include Section 3 language referenced in New Jersey's Section 3 Plan. Section 3 language is required in all RFPs or other types of solicitation (including procurement documents and bid offerings) and in any contracts. This language provides an overview of Section 3, requirements for bidders, and the required HUD Section 3 clause (24 CFR 75.27).

Bonding Requirements

- a) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified timeframe.
- b) A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.
- c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

Hurricane Ida Transparency

The Division of Recovery and Mitigation, as a recipient of federal Community Development Block Grant - Disaster Recovery funds for Hurricane Ida, must maintain a public website that includes relevant procurement information. On this page, you will find procurement policies and procedures, contracts paid with Ida CDBG-DR funds, and a description and status of services or goods being procured and requirements for responsive proposals.

Open procurements, including descriptions and requirements, may be found on [NJSTART](#). Please note that interested parties must be logged into NJSTART to see the open bids. You can find information on contracts procured with Sandy CDBG-DR funds on the [NJ Sandy Transparency page](#) managed by Office of the New Jersey Comptroller.

PROCUREMENT POLICY



IDA CONTRACT AWARDS



Website Posting

- Contracts paid with CDBG-DR funds must be posted on DCA and subrecipient websites.
- Include a summary and status updates of the services or goods being procured.

Knowledge Check

Scenario: You have contracted with a firm to provide design services for the CDBG-DR project. The procurement was compliant with federal regulations. You recently learned that this firm provides additional services you know will be required for project implementation, but these services were not included in the original solicitation or contract scope.

Question: Can you leverage this existing contract for these additional services?

☐ Yes

☒ No

A contract cannot be amended to include new scope that was not in the original solicitation or contract. A new procurement must be done to solicit these services.

Questions?



ADDITIONAL RESOURCES

- ▶ [2 CFR 200.318-327](#)
- ▶ CDBG-DR Procurement: [Buying Right Guide](#)
- ▶ HUD.gov: [Quick Guide to Cost and Price Analysis](#)