



DEPARTMENT OF  
**HOUSING**



**Guidelines on Compliance with the Provisions of  
2 C.F.R. § 200.318 to 2 C.F.R. § 200.327 for  
CDBG-DR Program Subrecipients**

**This page was intentionally left blank.**



## Table of Contents

<b>1</b>	<b>Overview .....</b>	<b>5</b>
<b>2</b>	<b>Initial Requirements .....</b>	<b>5</b>
	2.1.1 Procurement Process Recordkeeping .....	5
	2.1.2 Retroactive Waiver .....	6
	2.1.3 Applicability.....	6
<b>3</b>	<b>Guidelines .....</b>	<b>6</b>
	3.1.1 Policies Governing Conflicts of Interest and the Performance of Employees (2 C.F.R. § 200.318(c)) .....	6
	3.1.2 Full and Open Competition in Procurement Transactions (2 C.F.R. § 200.319) .....	7
	3.1.3 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 C.F.R. § 200.321) .....	8
	3.1.4 Cost and Price Analysis (2 C.F.R. § 200.324) .....	8
	3.1.5 Methods of Procurement (2 C.F.R. § 200.320) .....	9
	3.1.6 Time-and-materials Contract (2 C.F.R. § 200.318(j)) .....	9
	3.1.7 Contractor Oversight (2 C.F.R. § 200.318(b)) .....	9
	3.1.8 Bonding Requirements (2 C.F.R. § 200.326) .....	10
	3.1.9 Recordkeeping (2 C.F.R. § 200.318(i)) .....	10
	3.1.10 Domestic Preferences for Procurements (2 C.F.R. § 200.322).....	10
	3.1.11 Federal Awarding Agency or Pass-Through Entity Review (2 C.F.R. § 200.325) .....	10
	3.1.12 Procurement of Recovered Materials (2 C.F.R. § 200.323) .....	11
<b>4</b>	<b>Administrative Orders.....</b>	<b>12</b>
	4.1.1 Administrative Order 21-19 (AO-21-19) – Granting the Non-Federal Match Program (NFM) Exemption from Compliance with the PRDOH's CDBG-DR Procurement Manual .....	12
	4.1.2 Administrative Order 21-20 (AO-21-20) Authorizing Municipalities to Use the Provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327 in All CDBG-DR and CDBG-MIT-Related Procurement Processes .....	12
	4.1.3 Administrative Order 21-27 (AO-21-27) Authorizing Subrecipients to Use the Provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327 in All CDBG-DR and CDBG-MIT-Related Procurement Processes .....	12
<b>5</b>	<b>Program Oversight.....</b>	<b>13</b>

## 1 Overview

The Puerto Rico Department of Housing (**PRDOH**) acknowledges that Municipalities, as well as subrecipient entities, are a key component in Puerto Rico's recovery. That is the reason behind PRDOH's high level of commitment to provide them with the necessary support to ensure an effective implementation of all Programs. In view of the above, PRDOH decided to issue certain guidelines aimed at facilitating procurement procedures for all subrecipients.

It is a Public Policy of the Government of Puerto Rico and of PRDOH to expedite all Disaster Recovery processes on the Island and to make them more flexible to the extent possible, in order for CDBG-DR funds to reach participants quickly, in a timely and effective manner.

PRDOH, as grantee of the CDBG-DR funds, has determined that the procurement transactions and policies of the CDBG-DR programs will be governed by the provisions of federal statute 2 CFR § 200.317.

To this end, PRDOH successfully filed the corresponding certifications before the United States Department of Housing and Urban Development (**HUD**) regarding the way in which all procurement transactions and policies shall be governed prospectively. This allows PRDOH to follow its own procurement policies and procedures as provided in 2 CFR § 200.317 and, in turn, allows subrecipients to be subject to the provisions of 2 CFR §200.318 to 2 CFR §200.327.

This guide provides a summary of the guidelines that we recommend should be followed by all subrecipients in order to comply with the provisions of the federal statutes under 2 C.F.R. § 200.318 al 2 C.F.R. § 200.327. These guidelines do not represent the entirety of the statutes that regulate procurement transactions for subrecipients; therefore, they should stay abreast of all federal and state laws and regulations that have an impact on procurement transactions. Furthermore, these guidelines provide a summary of the provisions established by virtue of the different Administrative Orders issued in connection with the procurement transactions of the CDBG-DR and CDBG-MIT Programs.

Subrecipients must comply with all general guidelines and policies as established and published by the CDBG-DR and CDBG-MIT Programs.

## 2 Initial Requirements

### 2.1.1 Procurement Process Recordkeeping

As provided in Administrative Orders (**AOs**) 21-20 and 20-27, Municipalities and other subrecipients shall maintain detailed records of all procurement transactions in order to allow PRDOH to effectively monitor said processes when required.

### 2.1.2 **Retroactive Waiver**

The CDBG-DR Program's Procurement Area shall be aware of what has been stated in AOs 21-20 and 21-27 and shall retroactively waive the requirement for compliance by Municipalities and other subrecipients with the provisions of the CDBG-DR Program Procurement Manual, Regulation No. 9205.

### 2.1.3 **Applicability**

Any procurement process published prior to the date of issuance of the aforementioned administrative orders shall continue to be governed by the processes established under Regulation No. 9205.

## **3 Guidelines**

### **3.1.1 Policies Governing Conflicts of Interest and the Performance of Employees (2 C.F.R. § 200.318(c))**

In accordance with 2 C.F.R. § 200.318(c), non-federal entities must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts.

The written standards established by the subrecipients shall prohibit an employee, officer, or agent from participating 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. Such a conflict of interest would arise when the 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.

In addition, subrecipients shall establish in their written standards that their officers, employees, and agents may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

As provided in 2 C.F.R. § 200.318(c), subrecipients must be aware that their written standards must cover organizational conflicts of interest. This means that if a subrecipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. An organizational conflict of interest is defined as that in which the subrecipient is unable or appears to be unable to be impartial because of its relationship with a parent company, affiliate, or subsidiary organization.

For more information regarding conflicts of interest, you can access the CDBG-DR Conflict of Interest and Standards of Conducts Policy (**COI Policy**), in English and Spanish, at: <https://cdbg-dr.pr.gov/en/download/conflict-of-interest-and-standards-of-conduct->

[policy/](#) and <https://cdbg-dr.pr.gov/download/politica-de-conflictos-de-interes-y-estandares-de-conducta/>.

### 3.1.2 Full and Open Competition in Procurement Transactions (2 C.F.R. § 200.319)

All procurement transactions must guarantee a full and open competition process. Procurement transactions may not contain unreasonable requirements nor give unfair competitive advantage to some contractors. Therefore, a contractor who participates in the drafting or development of the requirements, specifications, scope of work, and calls for bids or requests for proposals (**RFP**) must not participate in said procurement process.

As provided in 2 C.F.R. § 200.319(b), some of the situations considered to be restrictive of competition include, but are not limited to:

- a. Placing unreasonable requirements on firms in order for them to qualify to do business;
- b. Requiring unnecessary experience and excessive bonding;
- c. Noncompetitive pricing practices between firms or between affiliated companies;
- d. Noncompetitive contracts to consultants that are on retainer contracts;
- e. Organizational conflicts of interest (See previous section on Conflicts of Interest);
- f. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- g. Any arbitrary action in the procurement process.

Subrecipients 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 in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

Nothing in 2 C.F.R. § 200.319 preempts state licensing and permit laws. When contracting for architectural and engineering (**A/E**) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms to compete for the contract, given the nature and size of the project.

All invitations to tender shall incorporate a clear and accurate description of the technical requirements for the material, service, or product to be procured. Detailed specifications that unduly restrict competition should be avoided. 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 brand name which must be met by offers must be clearly stated.

Subrecipients must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

Only noncompetitive procurements may be conducted as provided in 2 C.F.R. § 200.320.

### **3.1.3 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 C.F.R. § 200.321)**

Subrecipients must take all necessary affirmative steps to assure that minority businesses (**MBE**), women's business enterprises (**WBE**), and labor surplus area firms are used when possible.

As provided in 2 C.F.R. § 200.321 (b), affirmative action steps shall include:

- a. Including small and minority businesses and women's business enterprises (MBE/WBE) on solicitation lists;
  - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - c. When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration (**SBA**) and the Department of Commerce's Minority Business Development Agency (**MBDA**); and
- a. When entering into subcontracts, requiring the prime contractor to fulfill the first five (5) requirements listed above.

### **3.1.4 Cost and Price Analysis (2 C.F.R. § 200.324)**

Subrecipients must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract amendments or modifications. The method and degree of the cost or price analysis shall depend on the facts surrounding the particular situation of each procurement process; however, subrecipients must make independent estimates before receiving bids or proposals. Furthermore, subrecipients must comply with the provisions of 2 C.F.R. § 200.324(b) when



negotiating the contractor's profit in cases in which there is no price competition and in all cases where a cost analysis was performed.

2 C.F.R. § 200.324(c) provides that costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under 2 C.F.R. Subpart E (Cost Principles). Additionally, subrecipients may reference its own cost principles that comply with the Federal cost principles.

2 C.F.R. § 200.324 (d) prohibits the use of the cost plus a percentage of cost and percentage of construction cost methods of contracting.

### **3.1.5 Methods of Procurement (2 C.F.R. § 200.320)**

All subrecipients must have and use documented procurement procedures, consistent with the standards of §§ 200.317, 200.318, 200.319 and 200.320, and are subject to compliance with the procurement methods (including non-competitive methods) established in 2 C.F.R. § 200.320, as well as to meet all specifications as provided under this section. Subrecipients shall refer to § 200.320 in order to be conversant with the required standards for each procurement method.

The procurement methods established in 2 C.F.R § 200.320 include the following:

- a. Micro-purchases
- b. Small purchases
- c. Sealed bids
- d. Competitive proposals
- e. Non-competitive proposals

### **3.1.6 Time-and-materials Contract (2 C.F.R. § 200.318(j))**

Subrecipients 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. 2 C.F.R. § 200.318(j) provides that a 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. Subrecipients awarding such a contract shall be responsible asserting a high degree of oversight in order to ensure that the contractor is using efficient methods and effective cost controls.

### **3.1.7 Contractor Oversight (2 C.F.R. § 200.318(b))**

Subrecipients must maintain adequate oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

### **3.1.8 Bonding Requirements (2 C.F.R. § 200.326)**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, PRDOH may accept the bonding policy and requirements of the subrecipient, provided that PRDOH has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements established in 2 C.F.R. § 200.326 must be considered.

### **3.1.9 Recordkeeping (2 C.F.R. § 200.318(i))**

Subrecipients must maintain records sufficient to detail the history of all procurement processes. These records will include, but are not necessarily limited to, the following:

- a. Rationale for the method of procurement;
- b. Selection of contract type;
- c. Contractor selection or rejection;
- d. Basis for the contract price.

In accordance with OA 21-20 and 20-27, all subrecipients must maintain a record of their procurement actions which will allow PRDOH to effectively conduct their monitoring processes when required.

For more information on records management, please Access the Record Keeping Management and Accessibility Policy (**RKMA Policy**), which is available in English and in Spanish at: <https://cdbg-dr.pr.gov/en/download/record-keeping-management-and-accessibility-policy-rkma-policy/> and <https://cdbg-dr.pr.gov/download/politica-sobre-manejo-administracion-y-accesibilidad-de-documentos/>.

### **3.1.10 Domestic Preferences for Procurements (2 C.F.R. § 200.322)**

As appropriate and to the extent consistent with law, subrecipients should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, for example, without limitation to iron, aluminum, steel, cement, and other manufactured products. This requirement must be included in all subawards, contracts, and purchase orders for work or products under this award.

### **3.1.11 Federal Awarding Agency or Pass-Through Entity Review (2 C.F.R. § 200.325)**

Subrecipients must make available, upon request of PRDOH, all technical specifications on proposed procurements for which PRDOH believes such review is needed to ensure that the item or service specified is the one being requested.

This review shall generally take place prior to incorporating the specification into a solicitation document. However, if the subrecipient desires to have the review accomplished after a solicitation has been developed, PRDOH may still conduct such review, which shall be limited to the technical aspects of the proposed purchase.

As provided in 2 C.F.R. § 200.325(b), PRDOH may conduct a pre-procurement review and the subrecipient must make available to PRDOH procurement documents, such as requests for proposals, invitations for bids, or independent cost estimates, when:

- a. The subrecipient's procurement procedures or operations fail to comply with the procurement standards provided in 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327.
- b. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- c. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- d. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

A subrecipient shall be exempt from the pre-procurement review PRDOH determines that its procurement systems are in compliance with the provisions 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327.

Subrecipients may obtain a compliance certification by:

- a. Requesting that its procurement system be reviewed by PRDOH to determine whether its system complies with the provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327i. Generally, this option is used where there is continuous high-dollar funding and third-party contracts are awarded on a regular basis; or
- a. The Subrecipient may self-certify that its procurement system is in compliance with the provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327. Subrecipients must cite specific policies, procedures, regulations, or standards that fulfill these requirements. Such self-certification must not limit PRDOH's right to survey the subrecipient's procurement system and said system must be available for review.

### **3.1.12 Procurement of Recovered Materials (2 C.F.R. § 200.323)**

A subrecipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative

procurement program for procurement of recovered materials identified in the EPA guidelines.

## **4 Administrative Orders**

### **4.1.1 Administrative Order 21-19 (AO-21-19) – Granting the Non-Federal Match Program (NFM) Exemption from Compliance with the PRDOH’s CDBG-DR Procurement Manual**

The *Implementation Guidance for use of Community Development Block Grant Disaster Recovery funds as non-federal cost share for the Public Assistance Program*, as amended, in its Article VII, Section D(3), recommends that the procurement procedures of the Federal Emergency Management Agency (**FEMA**) be adopted for programs aimed at enabling the flexible matching of non-federal funds, in order to facilitate the processes of this program.

AO-21-19 exempts the NFM Program from compliance with the provisions of Regulation No. 9205, Procurement Manual for the CDBG-DR Program, in order for this Program's participants to abide by FEMA's acquisition processes, as amended from time to time.

Subrecipients must keep records of all procurement processes in order to ensure compliance with the requirements established by FEMA and must perform a cost or price analysis in cases where such analysis has not been performed by FEMA.

This Administrative Order shall have retroactive effect.

### **4.1.2 Administrative Order 21-20 (AO-21-20) Authorizing Municipalities to Use the Provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327 in All CDBG-DR and CDBG-MIT-Related Procurement Processes**

AO-21-20 allows municipalities to use the provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327 to carry out their procurement procedures, thus exempting them from complying with the provisions of Regulation 9205.

Municipalities shall maintain detailed records of their procurement processes so as to allow PRDOH to effectively carry out its monitoring processes when required. This Administrative Order shall have retroactive effect.

### **4.1.3 Administrative Order 21-27 (AO-21-27) Authorizing Subrecipients to Use the Provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327 in All CDBG-DR and CDBG-MIT-Related Procurement Processes**

AO-21-27 exempts all subrecipients from compliance with the provisions of Regulation 9205 and allows all subrecipients to carry out their procurement procedures based on the provisions established in 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327. In addition, AO-21-27 clarifies that all procurement processes published prior to this order's date of issue shall continue with the processes as provided in Regulation 9205.

## **5 Program Oversight**

The contents of this guiding documents shall in no way limit the role of PRDOH, HUD and/or the corresponding authority in overseeing and monitoring the Program's activities.

**END OF DOCUMENT**