



**GOVERNMENT OF PUERTO RICO**  
Department of Housing

# **Procurement Manual for the CDBG-DR Program**

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Puerto Rico Department of Housing

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## ARTICLE I GENERAL PROVISIONS

### Section 1.1 Title

This legal body shall be known and cited as the "Procurement Manual for the CDBG-DR Program" (**Manual**).

### Section 1.2 Legal Basis

This Manual is adopted pursuant to the authority granted to the Puerto Rico Department of Housing (**PRDOH**) in Articles 4-A and 4-B, 3 L.P.R.A. § 441c-1 to 441c-2, of Act Number 97, approved on June 10th, 1972, as amended, known as the "Organic Act of the Department of Housing", 3 L.P.R.A. § 441 *et seq.*, (**Act 97-1972**), and in accordance with (i) Act Number 38, approved on June 30, 2017, as amended, known as the "Puerto Rico Uniform Administrative Procedure Act" (**LPAU**, for its Spanish acronym), (ii) 2 C.F.R. part 200, effective as of the date hereof and may be amended hereafter, (iii) Public Law 115-56, known as the Continuing Appropriations Act, 2018 and the Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (**Appropriations Act**), and Public Law 115-123, known as the Bipartisan Budget Act of 2018 (iv) Federal Notice FR-6066-N-01 issued by the U.S. Department of Housing and Urban Development (**HUD**) and all subsequent waivers and amendments issued thereto (collectively, the **Notice**) (v) Regulation No. 7854 of May 21, 2010, known as the Regulation for Purchases of Goods and Non Personal Services of the Department and its Components (**Regulation No. 7854**), (vi) Regulation No. 6106 of February 25, 2000, known as the Regulation for Bids of the Department and its Components Regulation (**Regulation No. 6106**), as amended, and (vii) Regulation No. 6793 of March 29, 2004, known as the Regulation for the Bid Revision Board (**Regulation No. 6793**), as amended, all of which will complement this Manual.

In the event of any conflict between the provisions of Federal and local procurement regulations and this Manual, the most stringent provision must prevail.

### Section 1.3 Code of Conduct

The procuring entity maintains standards of conduct covering conflict of interests and governing the performance of its employees engaged in the selection, award, and administration of contracts.

### Section 1.4 Purpose

The purpose of this Manual is to establish standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, and other professional services for PRDOH's CDBG-DR Program. To ensure procurements are conducted in a manner that provides full and open competition or fair treatment of all persons or entities involved in PRDOH's Community Development Block Grant - Disaster Recovery Program (**CDBG-DR Program** or **CDBG-DR**) procurement processes which are funded totally or partially with federal funds.

### Section 1.5 Applicability

The procurement policies contained herein are applicable to every procurement action under the PRDOH CDBG-DR Program and activities, whether funded in whole or in part with CDBG-DR funds. The PRDOH, in the administration of CDBG-DR funds has elected to adopt these procurement policies for itself and all subgrantees and/or subrecipients of the CDBG-DR Program. Accordingly, when procuring property and services under CDBG-DR grants, the procuring entities, including subrecipients, shall follow this Manual and the procedures that PRDOH has developed for procurement.

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Prior to the commencement of a procurement action covered by this Manual, the subgrantee or subrecipient must receive specific training detailing the rules and requirements of this Manual by PRDOH.

### **Section 1.6 Competition**

- a. All procurement transactions must be conducted in a manner that provides full and open competition and is consistent with the standards of this section. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals must be excluded from competing for such procurements.
- b. Some of the situations considered to be restrictive of competition include, but are not limited to:
  1. Placing unreasonable requirements on bidders, offerors or proposers to qualify to do business;
  2. Requiring unnecessary experience and excessive bonding;
  3. Noncompetitive pricing practices between bidders, offerors or proposers or between affiliated companies;
  4. Noncompetitive contracts to consultants that are on retainer contracts;
  5. Organizational conflicts of interest;
  6. Specifying only a "brand name" product instead of allowing "an equal" product which includes a description of the item's essential characteristics so that competition is not restricted; and
  7. Any arbitrary action in the procurement process.
- c. The procuring entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local or geographical preferences in the evaluation of bids or proposals. Nothing in this section preempts state licensing laws. When procuring for architectural and engineering (**A/E**) services, geographic location may be a selection criterion provided its application allows an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- d. All solicitations of offers shall incorporate a clear accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features that unduly limit competition. The description may include the material, product, or services' essential characteristics to which it must conform to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. References to a brand name shall be followed by the words "or equal". The descriptions of the named brand characteristics that must be met shall be clearly stated.

## **ARTICLE II DEFINITIONS**

### **Section 2.1 Interpretation and Definition of Terms**

The concepts used in this Manual in the present tense include the future; those used in the masculine gender include the feminine and neutral, except for the cases in which such an

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interpretation may result nonsensical; the singular number includes the plural and the plural includes the singular.

For the purpose of this Manual the following terms or phrases shall have the following meanings, unless the context indicates otherwise:

- a. **Agent** – any person who acts on behalf of, or is authorized to commit a participant in a covered transaction.
  - b. **Architectural/Engineering (A/E) Services**
    - i. Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a licensed, registered, or certified person to provide those services; or,
    - ii. Professional services of an architectural or engineering nature performed by contracts that are associated with research, planning, development, design, construction, alteration, or repair of real property.
    - iii. Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, engineering inspections, and other related services.
  - c. **Award** – Written statement by which the procurement entity accepts a bid or proposal in a procurement process.
  - d. **Bid or Sealed bid** – An offer in response to invitations for bids.
  - e. **Bid Board** – For PRDOH: A body comprised of **five (5)** members designated by the Secretary through an Administrative Order. The members of the Bid Board may be officials or employees of the procuring entity and its component agencies. One (1) of the members must be the Deputy Secretary, or its equivalent, of the procuring entity, who will act as President of the Bid Board. Also, one (1) of the members shall be an attorney licensed in Puerto Rico. Three (3) of the five (5) members will constitute quorum for Bid Board meetings. The Bid Board will evaluate and award bids and proposals in formal and informal bidding processes for the acquisition of non-personal goods or non-personal services and professional services in a formal procurement process to be executed by the procuring entity, according to the applicable regulations. *Procuring entities other than PRDOH may have a Bid Board or similar entity with the authorization to award bids as defined by their governing policies.*
  - f. **Bid Guarantee or Bid Bond** - Shall 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 their bid, execute such contractual documents as may be required within the time specified.
  - g. **Bid Review Board** – A body comprised of **three (3)** members of the highest moral reputation and renowned competence and experience in the matters that they shall be addressing as members of this body. The members of the Bid Review Board shall be appointed by the PRDOH Secretary and the same shall not be officials or employees of
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the PRDOH or its attached agencies, nor shall they have any direct or indirect interest in enterprises, businesses or projects that do business with the Department and its attached agencies, or that are total or partially financed by the Department or its attached agencies. The Secretary of the PRDOH shall appoint one (1) of its members as Chairman of the Board, who shall be an attorney authorized to exercise the legal profession. The Bid Review Board has exclusive authority and jurisdiction to evaluate and resolve appeals filled by persons affected by decisions of the Bid Board and shall abide by the provisions stated in the aforementioned administrative act, LPAU. See Article 4-C (c) of Act No. 97 of June 10, 1972, as amended, known as the Department of Housing Governing Act, 3 L.P.R.A. § 441c-3(c).

- h. **PRDOH** - Puerto Rico Department of Housing.
  - i. **CDBG-DR** - Community Development Block Grant-Disaster Recovery.
  - j. **Change Order** - A written agreement between the parties that sets out changes in price, time, or Scope of Work to the Contract, which has been approved by the Contracting Officer.
  - k. **Competitive Proposals Method** - Solicitations under negotiated procedures which are used to communicate program requirements to prospective contractors and to solicit proposals. These procedures include, but are not limited to, Request for Proposals, among others.
  - l. **Competitive Range** – Proposals in a Request for Proposals process determined by the Contracting Officer to have a reasonable chance of receiving an award after the Evaluation Committee has evaluated all proposals in accordance with technical and cost proposal requirements. Those Proposers within the competitive range will be known as “Qualified Proposers”.
  - m. **Contract** - A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the procuring entity and/or subrecipient to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) Job Orders or Tasks Letters issued under basic ordering agreements; Orders, such as Purchase Orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C § 6301, *et seq.*
  - n. **Contracting Officer** - PRDOH Secretary or his/her designee, or a non- PRDOH procuring entity's authorized representative.
  - o. **Contractor** - A Vendor, Supplier, Offeror, Proposer, or Bidder, as applicable, who is awarded and executes a Contract (as defined hereinabove) or a Purchase Order with the procuring entity.
  - p. **Cooperative Purchasing/Intergovernmental or Interagency Agreements** - Agreements between the procuring entity and other governmental agencies, or entities to purchase or use common supplies, equipment, or services.
  - q. **Cost Estimate**: The estimate of the costs of the goods or services to be acquired, prepared by the procuring entity staff or a third-party for Micro Purchases and Small Purchases.
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- r. **Disaster Recovery Deputy Secretary** – the Director of the CDBG-DR Program of the Puerto Rico Department of Housing.
  - s. **Emergency** - Situation which causes unexpected and unforeseen public needs, and which requires immediate action by the procuring entity due to the danger that it represents to life, health or public safety.
  - t. **Evaluation Committee** - Administrative body comprised of at least **three (3)** or more members, having an odd number of members (3, 5, or 7), and an alternate member, if considered necessary, appointed by the procuring entity to evaluate proposals (mostly execute rating and ranking) in a competitive procurement process. PRDOH's Secretary or the non-PRDOH procuring entity representative shall designate a Chairman to lead the process.
  - u. **First-tier Subcontractor** – A subcontracted entity contracted directly by the prime contractor who provides any supplies, materials, equipment, or services of any kind required under the prime contract, or a first-tier subcontract.
  - v. **Independent Cost Estimate (ICE)** - An independent analysis of the estimate of the costs of the goods or services to be acquired, prepared by the procuring entity staff or a third-party prior to publishing a solicitation for offers.
  - w. **Invitation for Bids (IFB)** – Bids are publicly solicited, and a firm fixed 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 price.
  - x. **Micro Purchase Method** - Acquisition of supplies or services which does not exceed the Micro Purchase Threshold at 2 C.F.R. 200.67.
  - y. **Minority Owned Business** - Entity whose management and daily operations are controlled by, and where at least 51% of the voting stock, is owned by a person or persons who belong to a racial, ethnic or cultural group.
  - z. **Negotiation** - Discussions with Offerors or Proposers in the Competitive Range regarding technical and cost proposals when awarding a contract using the Competitive Proposals Method of procurement or when issuing modifications to existing contracts or other required discussions with Offerors in other procurement processes.
  - aa. **Noncompetitive Proposal Method**– Procurement by means of solicitation of a proposal from only **one (1)** source when the item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; HUD expressly authorizes noncompetitive proposals in response to a written request from PRDOH; or after solicitation of a number of sources the competition is determined inadequate.
  - bb. **Offer** - A response to a solicitation by the procuring entity that, if accepted, would bind the Offeror or Proposer to perform the Contract. Responses to invitation for bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to requests for proposals (negotiations) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations”, not offers.
  - cc. **Payment bond** – Bond executed in connection with a contract to ensure payment as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract. The bonds may vary according to the type of Contract and are not required in the Small Purchase Method.
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- dd. **Performance bond** - Bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - ee. **Prequalification of Sources/ Pre-Qualification List ("Pre-Qualified List" or "PQL")** – Competitive method of procurement in which the price is not an evaluation factor, used to select a pool of professional services firms or individuals to provide services for any procurement activity, the scope of which requires professional qualifications, licenses, or certifications, selected on the basis of a Request for Qualifications (RFQ). The PQL must have been qualified by the procuring entity.
  - ff. **Prime Contractor:** A contractor of the procuring entity with potential for offering subcontracting opportunities.
  - gg. **Procuring Entity and/or procurement entity** – refers to PRDOH or its subrecipients that are authorized to conduct procurement processes based on this Manual.
  - hh. **Procurement File** – Official record kept by the procuring entity of each procurement process which documents in detail the significant history of the procurement.
  - ii. **Proposer** - A person or legal entity that responds to a solicitation issued by the procuring entity in a Competitive Proposal Method of procurement. May also be referred to as Respondent or Offeror.
  - jj. **Proposal** - The Offer submitted by a potential Contractor in a Competitive or Non-Competitive Proposals Method of procurement.
  - kk. **Qualification Based Selection Method (QBS)** - A procurement method conducted using Request for Qualifications where the procuring entity first selects the highest ranked respondent on technical factors and then negotiates price.
  - ll. **Quotation** - A price or offer submitted by an Offeror or Supplier under the Small Purchase Procurement Method.
  - mm. **Redacted Copy** – A copy of any Contract or any Record (other than an Invoice) that contains confidential, proprietary, nonpublic or commercially sensitive information, a photocopy or facsimile copy thereof as to which the offeror has redacted or obscured only such confidential, proprietary, nonpublic or commercially sensitive information.
  - nn. **Request for Proposals (RFP)** - Solicitation method used under the competitive methods of procurement. Proposal evaluation and Proposer selection are based on the evaluation criteria and factors for award as stated in the RFP. Contract award is based on the best proposal that meets the requirements of the scope of work resulting in the greatest benefit and best value to the procuring entity, which may not be primarily determined based on price.
  - oo. **Request for Qualifications (RFQ)** – The first phase of a two-phase solicitation process used under the Qualification Based Selection Method (QBS) and/or the Prequalification of Sources/ Prequalification List (PQL) competitive methods of procurement. Statement of Qualifications (SOQs) evaluation and Respondent selection shall be based on the evaluation criteria and factors for selection as stated in the RFQ.
  - pp. **Request for Quotations (rfQ)** – General Services (GSA) procurements shall be solicited through the issuance of a request for Quotations (rfQ). The rfQ must include a Scope of Work (SOW) and the evaluation criteria and factors for award.
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- qq. **Responsibility**- Refers to the character or quality of the bidder or proposer, with consideration being given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- rr. **Responsiveness** – Refers to the bidder's compliance with all required specifications in the solicitation, inclusive of any addenda. Any bidders or proposers listed on the System for Award Management (SAM) Excluded Party List will be deemed nonresponsive and automatically excluded from consideration for award.
- ss. **Scope of Work/Services** – Defines the project and states the procuring entity requirements. May include a description of the goods or services required, deliverables and the criteria which a deliverable must meet to be considered acceptable; milestones or indicators to determine activity/project progress as applicable; delivery schedule or timelines; specifications or technical information; staff position requirements and responsibilities; and other special considerations.
- tt. **Sealed Bidding Method** - A method of procurement used for non-professional services or supplies that exceed the Small Purchase Threshold. In order for sealed bidding to be feasible, there must be accurate and complete specifications, a specific date and time for the submission of sealed bids, a Public Bid Opening, an evaluation of Bids, and award of the Contract based on the lowest price submitted by a Contractor through a Responsive Bid.
- uu. **Secretary** – Secretary of the Puerto Rico Department of Housing.
- vv. **Section 3** - Provision of the Housing and Urban Development Act of 1968 (HUD Act). The purpose of Section 3 is to ensure that employment, and other economic opportunities generated by certain financial assistance provided by the Department of Housing and Urban Development (HUD), to the greatest extent feasible and consistent with existing Federal, State and local laws and regulations, shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
- ww. **Section 3 resident** - A public housing resident; or a low- or very low- income person residing in the metropolitan area or non-metropolitan county where the Section 3 covered assistance is expended.
- xx. **Section 3 business** - Entity where at least fifty one percent (51%) of the stock, is owned by one or more Section 3 residents; or employs Section 3 residents for at least thirty percent (30%) of its full-time, permanent staff; or provides evidence of a commitment to subcontract to Section 3 business concerns, twenty-five percent (25%) or more of the dollar amount of the awarded contract.
- yy. **Simplified Acquisition Threshold** - Means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold.
- zz. **Small Purchase Method** – Competitive method of procurement of goods, work and/or services in an aggregate amount equal or less than the Simplified Acquisition Threshold.
- aaa. **Solicitation** – Any request to submit offers or quotations to the procuring entity. Solicitations under sealed bid procedures are called 'invitation for bids'. Solicitations
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under negotiated procedures are called "requests for proposals." Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

bbb.**Subgrant** – an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

ccc.**Subgrantee** – a Non-Federal entity to which a subgrant is awarded and which is accountable to PRDOH for the use of the funds provided.

ddd.**Subrecipient** – a Non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program on behalf of that entity; but does not include an individual that is a beneficiary of such program.

eee.**Task Order** - An executed document by the procuring entity or by both the contractor and the procuring entity which authorizes work on all or certain items in the Scope of Work of a contract for distinct time periods. Task Orders may include set budgets for the work.

fff. **User Area** – Administrative unit, bureau, division, department or area within the CDBG-DR Program that requests services under the CDBG-DR allocation.

ggg.**Women-owned small business** - Entity whose management and daily business operations are controlled by, and where at least fifty-one percent (51%) of the stock, is owned by one or more women; or a small business concern eligible under the Women-Owned Small Business Program in accordance with 13 C.F.R. part 127.

## ARTICLE III PROCUREMENT ADMINISTRATION

### Section 3.1 Segregation of Duties

The PRDOH or the procuring entity shall impose segregation of duties measures to reduce the risk of erroneous and inappropriate actions and deter fraud and fraudulent acts.

### Section 3.2 Contracting Officer

All procurement processes shall be the responsibility of the Secretary or their designee in accordance to Act 97-1972, and they shall ensure that PRDOH or any procuring entity meets the procurement and program requirements in each procurement process or action funded totally or partially with federal funds.

### Section 3.3 Procurement Division Personnel Roles and Responsibilities

The following are the Procurement Division's personnel with their roles and responsibilities:

- a. **Procurement Director** – The Procurement Director is responsible for reviewing proposals, ensuring compliance with requirements and regulations, maintaining communication to ensure timely execution, and analyzing contract documents.
  - b. **Procurement Deputy Director** – The Procurement Deputy Director is responsible for reviewing proposals, ensuring compliance with requirements and regulations, maintaining communication to ensure timely execution, and analyzing contract documents.
  - c. **Procurement Specialist** – The Procurement Specialist is responsible for assisting the Procurement Director and Deputy Director with reviewing proposals, ensuring compliance with requirements and regulations and analyzing contract documents.
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PRDOH Subrecipients shall assign, identify, and maintain at all times, an adequate organizational structure with the identified personnel roles and responsibilities needed to conduct procurement activities necessary to implement the program/activity; and shall impose a segregation of duties measures to reduce the risk of erroneous and inappropriate actions and deter fraud and fraudulent acts.

### **Section 3.4 Procurement Process**

The PRDOH or the procuring entity will review in a timely manner previous procurement processes, to incorporate efficiencies, maximize competence and minimize the costs of acquisitions.

### **Section 3.5 Procurement Division Contact Information**

For assistance or specific information about CDBG-DR Procurement contact:

Email: [CDBGDR-PROCUREMENT@vivienda.pr.gov](mailto:CDBGDR-PROCUREMENT@vivienda.pr.gov)

Telephone: (787) 274-2527 Ext. 6617/6618

## **ARTICLE IV PROCUREMENT OF RECOVERED MATERIALS**

Procuring entities are encouraged to purchase materials that maximize the use of recovered and recycled materials. In doing so, they must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The procuring entities will procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; 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.

## **ARTICLE V PROCUREMENT FORMS**

### **Section 5.1 General Rule**

The procurement forms shall be utilized by PRDOH, and all its subgrantees and subrecipients, for every procurement action. Except explicitly authorized by PRDOH.

### **Section 5.2 Specific Forms**

The procurement forms will be used in accordance with this Manual and the written Standard Operating Procedures developed by PRDOH for procurement processes. Each procurement file, including subgrantees and subrecipient files, must contain the appropriate procurement forms as established in the corresponding Standard Operating Procedures. Procurement forms are subject to revisions and modifications at the discretion of PRDOH.

## **ARTICLE VI MINORITY, SMALL, AND SECTION 3 BUSINESS PARTICIPATION**

### **Section 6.1 General**

The procuring entity shall take appropriate affirmative action to assure that Small Businesses, Minority Owned Businesses (**Minority Business Enterprise, MBE**), Women's Businesses (**Women Business Enterprise, WBE**), Section 3 Businesses, and labor surplus area businesses have sufficient

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opportunity to participate in all procurement processes financed in whole or in part with PRDOH CDBG-DR federal funds. The procuring entity shall also consider the feasibility of dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority firms, women's business enterprises, and labor surplus firms. Where permitted by regulations, delivery schedules will be developed including participation by such businesses. The procuring entity shall assist the prime contractor whenever possible by providing lists that identify qualified small and minority businesses, women's business enterprises, and labor surplus area firms.

### **Section 6.2 Affirmative Action Steps**

Affirmative action steps for the policy stated in Section 6.1 (General) of this Manual shall include:

- a. Placing qualified small and minority businesses, and women's business enterprises (**MBE/WBE**) and Section 3 Businesses (**SEC3**) on solicitation distribution lists;
- b. Assuring that MBE/WBE/SEC3 are solicited whenever they are prospective sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBE/WBE/SEC3;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by MBE/WBE/SEC3 enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration (**SBA**), and the Minority Business Development Agency of the Department of Commerce (**MBDA**);
- f. Carrying out workshops on CDBG-DR procurement requirements and procedures;
- g. Including in contracts, to the greatest extent feasible, a clause requiring Contractors to provide opportunities for training and employment for lower income residents of the project area and to award Subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 C.F.R. part 135 (Section 3 businesses); and
- h. As a required component of Invitations for Bids or Request for Proposals/ Qualifications, requiring the prime contractor and its Subcontractors to take the affirmative steps listed in this section and as otherwise directed in the Invitation for Bids or Request for Proposals/Qualification.

## **ARTICLE VII COST OR PRICE ANALYSIS**

### **Section 7.1 General**

The procuring entity shall require assurance that, before entering into a contract, a contract modification, or a change order, the cost or price is reasonable. The method and degree of cost or price analysis shall depend on particular facts of each procurement process, but as starting point, the procuring entity must complete an independent cost estimate for the work to be completed. Documentation associated with the elements used in the evaluation of cost or price will be maintained in the file.

To determine cost reasonableness<sup>1</sup>, a two-step process must be undertaken during the procurement:

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<sup>1</sup> The term cost reasonableness is defined in 2 C.F.R. § 200.404, not to be confused with the terms cost or price.

**Step 1.** Prior to receipt of bids, proposals or change order: The procuring entity must complete an Independent Cost Estimate (ICE) for every procurement that is in excess of the Small Purchase Threshold.

**Step 2.** Prior to the award of a contract: The procuring entity must complete a cost analysis or price analysis to determine if the cost or price proposed is reasonable.

### **Section 7.2 Independent Cost Estimate (ICE)**

The ICE must establish the total estimated cost related to the execution of the Scope of Work. The ICE will consider separate cost elements, as applicable, dependent on whether a cost or price analysis will be performed. The ICE must be completed in the same manner as the cost or price is requested in the solicitation to allow for a comparison. The ICE must be properly supported by data and documentation, this may include commercial pricing and sales information adequate to evaluate the reasonableness of the cost or price, such as, contracts of similar scope and scale; average costs for similar work in the area; published cost from a national cost estimating database or construction estimating software; a catalog, or other evidence of the market price, or documentation showing that the offered price is set by law or regulation.

### **Section 7.3 Cost Analysis**

- a. Cost analysis is the evaluation of separate cost elements that make up the offeror's total cost proposal to determine if they are allowable, directly related to the requirement, and reasonable. Whenever a cost analysis is required, it shall be performed by the Procurement Division of the procuring entity.
- b. A cost analysis shall be performed in the following instances:
  1. When supporting data for other commercially available items of similar products or services are not available.
  2. When negotiating with a sole source.
  3. When, after soliciting proposals or sealed bids, only one proposal or bid is received and it differs substantially from the ICE.
  4. When there is a contract modification or change order that changes the scope and impacts price, and there is no available data to support the cost or price.

A cost analysis is not required when the price can be established on the basis of catalog or market prices of commercial products or services, or when the price is established by law or regulation.

Whenever the procuring entity is required to perform a cost analysis, profit must be negotiated separately. To establish a fair and reasonable profit, consideration must 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, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- c. To perform a cost analysis, the procuring entity shall:
  1. Verify the cost submitted, and review:

- a. The reasonableness of the proposed costs, including allowances for contingencies if applicable. To be considered reasonable, proposed costs must meet three critical tests. The costs must be allowable, allocable, and reasonable in accordance with 2 C.F.R. § 200.403-405.
- b. The necessity for proposed cost items. A cost may be allowable under the cost principles and even allocable to the type of work to be performed, but still not be necessary for the specific contract. The procuring entity may consult with technical assistants or program/user areas if it is not clear that a proposed cost aligns with the framework established under the ICE or the requested services.
- c. The application of audited or pre-negotiated (e.g., by the Federal Government) indirect cost (e.g., overhead) rates, labor and fringe benefit rates, or other factors.

### **Section 7.4 Price Analysis**

- a. Price analysis is the evaluation of a proposed price without analyzing any of the separate cost elements that it is composed of.
- b. The procuring entity may use price analysis in the following instances:
  1. When supporting data for other commercially available items of similar products or services are available and/or when the price can be established on the basis of catalog or market prices of commercial products or services, or when the price is established by law or regulation.
  2. When there is adequate competition, meaning that two or more responsible offerors are able to compete effectively and independently for the contract.
  3. When there is a contract modification or change order that changes the scope and impacts price, and there is available data to support the cost or price.

## **ARTICLE VIII METHODS OF PROCUREMENT**

### **Section 8.1 Recognized Methods of Procurement**

- a. **Seven (7)** primary procurement methods shall be used by the procuring entity to procure materials, supplies, construction and services for CDBG-DR program activities, as referenced in sections below:
    1. Micro Purchases;
    2. Small Purchases;
    3. Sealed Bids;
    4. Competitive Proposals, including Request for Proposals (**RFP**), Qualifications Based Selection (**QBS**), and Prequalification of Sources/ Prequalification List (**PQL**);
    5. Noncompetitive Proposals (including Emergency Purchases);
    6. GSA Schedule Purchases; and
    7. Cooperative Purchasing/Intergovernmental or Interagency Agreements
  - b. The acquisition of goods for Micro Purchases and Small Purchases shall be awarded by means of purchase orders, while services shall be contracted through Contracts. Other
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methods of procurement shall be awarded by means of a Contract, unless otherwise provided in this Manual.

- c. When conditions are not appropriate for the use of Sealed Bids, the method of Competitive Proposals must be used. This is typically when the procurement is for professional services which exceed the Small Purchase Threshold.

## Section 8.2 General Rules

- a. An environmental evaluation must be completed for a proposed project/activity that could have an environmental impact, prior to commencing a procurement process.
  - b. All procurement processes shall be conducted in a manner providing for full and open competition and shall avoid any conditions that may restrict such competition.
  - c. The Contracting Officer shall not approve purchases or modifications of contracts aggregating more cost to the original Small Purchase and increasing the cost of the purchases to sum more than the Small Purchase threshold or the Micro Purchase threshold.
  - d. The Contracting Officer shall ensure compliance with the minimum bonding requirements in Construction Contracts which the amount exceeds the Federal Small Purchase Threshold, mostly awarded using the procurement methods of Sealed Bidding Competitive and Noncompetitive Proposals. These are:
    1. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price.
    2. A performance bond on the part of the contractor for one hundred percent (100%) of the contract price.
    3. A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. The bonds may vary according to the type of Contract and are not required in the Small Purchase Method.
  - e. Except for Micro Purchases and Small Purchases, if a procurement is advertised via traditional media (i.e. newspaper), the solicitation must be published at least **once (1) each week for two (2) consecutive weeks**.
  - f. Any amendments prior to the receipt of Offers shall be issued to all potential offerors.
  - g. Any amendments after the Offers due date will be issued to all offerors that have not been eliminated from the competition.
    - i. If it's determined that the changes may have had an impact on the acceptability of any offeror who was not included in the Competitive Range, the procuring entity should consider re-determining the range to include such offerors and provide them with the amendment.
    - ii. If at any time in the process any needed changes are substantial enough as to exceed what potential offerors reasonably could anticipated, so that additional offerors would have submitted offers had the changes been known to them, the procuring entity should cancel the Solicitation, make the needed changes, and issue a new Solicitation with a new Offers due date.
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### Section 8.3 Micro Purchases

- a. Procurement by a Micro Purchase procedure is the acquisition of goods or services, that the aggregate dollar amount does not exceed ten thousand dollars (\$10,000<sup>2</sup>) (or two thousand dollars (\$2,000) in the case of acquisitions for construction subject to the Davis-Bacon Act).
- b. To the extent practicable, the procuring entity must distribute micro-purchases equitably among qualified suppliers.
- c. Micro-purchases may be awarded without soliciting competitive quotations if the procuring entity considers the price reasonable. Only one quotation may be solicited if the price is considered reasonable and documented in the file.
- d. The procuring entity must make a determination on price reasonableness.
- e. The procuring entity may request changes of an existing Purchase Order (**PO**) to authorize modifications to the scope, term, schedule and/or cost, provided that such changes are consistent with the following conditions:
  - Changes are within the Scope of Work; and
  - The original PO amount plus cumulative PO changes shall never result in an amount greater than \$10,000.

### Section 8.4 Small Purchases

- a. Any procurement not exceeding the Small Purchase threshold of two hundred fifty thousand dollars (\$250,000.00<sup>3</sup>).
- b. Not less than **three (3)** potential suppliers shall be solicited to submit a quotation.
- c. However, larger requirements may be broken into smaller ones. When this occurs, the Contracting Officer should document in the Procurement File the reasons for breaking down larger requirements into smaller ones.
- d. Small Purchase Contracts and Purchase Orders must address cause for termination and for convenience by the non-Federal entity including the manner by which such termination shall be executed and the basis for settlement.
- e. The Contracting Officer or designated official may negotiate price and other terms of purchase, when appropriate. The primary objective of the negotiation is to maximize the procuring entity's ability to obtain the best possible offer. Suppliers shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their quotes. A common deadline shall be established for receipt of quotes revisions based on negotiations. During negotiations, the Procurement Division may inform the Supplier that its price is considered too high or too low and provide clarification relative to ensuring full understanding of, and conformance to small purchase requirements. Nonetheless, the Procurement Division should not:
  - Provide information about any other quote;
  - Suppliers shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award.
- f. The procuring entity must make a determination on price reasonableness.

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<sup>2</sup> See Office of Management and Budget Memorandum M-18-18 published on June 20, 2018.

<sup>3</sup> Id.

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- g. The procuring entity may request changes of an existing Purchase Order (PO) to authorize modifications to the scope, term, schedule and/or cost, provided that such changes are consistent with the following conditions:
  - 1. Changes are in accordance with the Scope of Work; and
  - 2. The original PO amount plus cumulative PO changes shall never result in an amount over \$250,000.00.

### Section 8.5 Sealed Bidding Method

- a. **General:** A method of procurement used for acquisition of services or supplies that exceeds the Small Purchase Threshold. Requires accurate and complete specifications, a Public Bid Opening, an evaluation of Bids, and award of the Contract based on the lowest price submitted by a Responsible Contractor through a Responsive Bid. The IFB is the preferred method for procuring construction services, if the following conditions apply: (i) complete, adequate, and realistic specifications or a purchase description is available; (ii) two or more responsible bidders are willing to compete effectively; and (iii) the procurement lends itself to a firm fixed price contract and the selection can be made principally on the basis of price.
- b. **Solicitation and Receipt of Bids:** The IFB shall include specifications, all contractual terms and conditions applicable to the procurement, and a statement that the award will be made to the lowest Responsible and Responsive Bidder whose Bid meets the requirement of the solicitation. The IFB must state the time and place for both receiving the Bids and the Public Bid Opening.

The IFB shall include the date the Contracting Officer will hold a Pre-bid Conference. The time between the advertisement of the IFB and the date of the Pre-bid Conference should be sufficient for the bidders to review the IFB and prepare for the conference. Nothing said at the Pre-bid Conference will change any of the terms of the IFB, except a written amendment to the solicitation.

The period between the advertisement of the IFB and the date when the Bids are received by the Procurement Division must also be sufficient to achieve effective competition.

- c. **Specifications:** The specifications and attachments must clearly define the items or services needed in order for bidders to properly respond to the invitation. All the specifications must be drafted for the intended purposes and to promote competition. The procuring entity must ensure that it is not unduly restrictive or represents duplicity. Detailed specifications should be avoided over products.
  - d. **Limitations:** The following specifications in solicitations must be avoided as these could limit competition.
    - 1. Requiring unnecessary experience and excessive bonding.
    - 2. Placing unreasonable requirements on firms for them to qualify to do business.
    - 3. Geographical restrictions which are not required, nor promoted by the federal law, except in cases of Architectural and Engineering (A/E) Contracts, which may include geographical locations if such a selection factor allows for adequate competition.
    - 4. Brand products specifications or catalog numbers. Specific brand names may be used only for establishing standards that the article must comply for the use
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proposed. References to brand names shall be followed by the words "or equal". When brand names or catalog numbers are used, the bidders must be informed that such references establish only standards desired; in fact, any other product that clearly demonstrates the standard is also acceptable.

5. However, nothing in this procurement policy will have the effect of excluding, ("preempt") the application of the laws of Puerto Rico related to professional licenses.

e. **The Bid Opening and Award:**

1. All bids received should be time stamped by the procuring entity to demonstrate that they were received prior to the deadline. The procuring entity should keep the bids in a secure place to ensure that they are not opened or mishandled before opening.
2. Sealed Bidding is a public process; therefore, Bids shall be publicly opened and in the presence of at least **one (1)** witness. All interested parties are permitted to attend the Bid Opening.
3. The Bid Opening must be recorded in a minute. The minute must state:
  - The Bidders' name;
  - The Bidders' total proposed costs as stated in the Bids;
  - The total amounts of the Bid Bonds submitted with the Bids; and
  - The date and time the Bids were received.
4. If equal low responsive and responsible Bids are received, secondary criteria will be used as tiebreakers.

f. **Withdrawal**

1. A Bidder may withdraw the Bid at any time prior to the Bid Opening by written notice received in the Procurement Division as established in the IFB.
2. After Bid Opening, a Bidder may also be permitted to withdraw a Bid if the Bidder submits written evidence that clearly demonstrates that a mistake was made. All decisions to allow withdrawal of a Bid shall be supported by a written determination signed by the Contracting Officer or the Procurement Director, as delegated official. After Bid Opening, changes in Bid (s) or other provisions of Bid (s) shall not be permitted.

## **Section 8.6 Competitive Proposals Method**

**General:** The Competitive Proposal Method is typically used to contract, but not limited to, professional consulting, architectural or engineering services, and other professional services. This method of procurement allows for the consideration of technical factors other than price; discussion concerning Proposals submitted; negotiation of other Contract terms and conditions; revision of Proposals before the final selection; and the withdrawal of a Proposal at any time up until the point of award. Award is made based on the Proposal that represents the most advantageous, considering price and other factors, such as technical expertise, experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

### **Section 8.6.1. Request for Proposals**

- a. **Conditions of Use:** Where conditions are not appropriate for the use of Sealed Bidding, Competitive Proposals may be used. Competitive Proposals are the preferred method for procuring professional services that will exceed the Small Purchase Threshold.
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- b. **Form of Solicitation:** Competitive Proposals shall be solicited through the issuance of a Request for Proposal (**RFP**). The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors and price. A mechanism for fairly and thoroughly evaluating the technical and price Proposals shall be established before the solicitation is issued. Proposals shall be handled to prevent disclosure of the number of Proposals, identity of the Proposers, and the contents of the Proposals until after award. The procuring entity must establish the evaluation criteria taking into consideration price or may consider price in conjunction with technical factors. In either case, the method for evaluating price shall be established in the RFP.
- c. **Evaluation:** The proposals will be evaluated by an Evaluation Committee. The Evaluation Committee must base the evaluation of the Proposals only on the criteria established in the RFP. The Procurement Division will provide the necessary guidance to the designated Evaluation Committee members to support a standardized and consistent evaluation process for each procurement.
- d. **Negotiations:** The Evaluation Committee may recommend negotiations with Proposers that have a reasonable chance of being selected for award ("Qualified Proposers"). The determination must be based on the score of the Proposals, as these have been evaluated and rated in accordance with the requirements established in the RFP. The primary objective of the negotiations is to maximize the procuring entity's ability to obtain the best possible offers. The Procurement Division must notify the Contracting Officer about the recommendation to negotiate in order to obtain the Contracting Officer's authorization prior to negotiation. Proposers shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their Proposals. A common deadline shall be established for receipt of Proposal revisions based on negotiations. During negotiations, the Procurement Division may inform the Proposer that its price is considered too high or too low, and provide clarification relative to ensuring full understanding of, and conformance to the RFP requirements. Nonetheless, the Procurement Division should not:
- Provide information about any other Proposal.
  - Distribute information to Proposer(s) regarding the scoring of Proposal(s).
  - Proposers shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award.

During negotiations the procuring entity also reserves the right to standardize pricing amongst multiple award procurements when such action would serve a specific project/activity goal or requirement. Negotiations may be engaged throughout Best and Final Offers, as applicable to the procurement methods.

1. Best and Final Offer (**BAFO**) refers to a step that may be utilized in the procurement process in which the Procurement Division, as duly designated by the Contracting Officer, invites all Qualified Proposers to submit their BAFOs, which may include making changes in their technical proposal and/or price as requested by the Officer/ designee. All Qualified Proposers should be provided an opportunity to present BAFOs.
  2. The Procurement Division will evaluate the BAFO using the same manner as the initial offers. The Procurement Division, at their discretion, may invite the
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Evaluation Committee (either in part or in full), User Area or consultants to participate or provide technical assistance in the review of the BAFOs.

3. BAFOs are usually requested only once in a competition. The Procurement Division may determine that it is in the procuring entity's best interest to conduct another round of negotiations and request a second best and final offer. The Procurement Division should document the rationale for re-opening negotiations and requesting any additional best and final offers in the procurement file.
  4. Changes to the Scope of Work/Services resulting from negotiations to request a BAFO should not be considered an amendment to the RFP Instructions, hence it shall not be required to publish an Addendum.
- e. **Award:** The Bid Board shall make the final selection based on the RFP after considering the recommendation of the Evaluation Committee. The selected respondent(s) will be notified through a Notice of Award issued by the Bid Board. The award (or awards in case of multiple awards) shall be made to the responsible firm(s) whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the procuring entity provided that the cost or price is reasonable under the methods identified in this manual.

#### **Section 8.6.2. Qualifications Based Selection (QBS)**

- a. **Conditions for Use:** The procuring entity may use a competitive procedure for qualifications-based procurement of architectural/engineering (A/E) design contracts whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in 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.
  - b. **Form of Solicitation:** QBS is conducted using Request for Qualifications (RFQs) where the procuring entity first selects the highest ranked respondent on technical factors and then negotiates the price. The RFQ shall clearly identify the selection criteria for which the procuring entity shall evaluate each potential contractor. Selection criteria shall include necessary professional qualifications and experience of the firm regarding design of a specific type of project; experience and professional qualifications of the firm staff to be assigned to the project; and overall performance record of the firm. A mechanism for fairly and thoroughly evaluating the technical aspects of responses shall be established before the solicitation is issued. Responses shall be handled to prevent disclosure of the number of responses, identity of respondents, and the contents of the responses until award.
  - c. **Evaluation:** Responses will be evaluated by an Evaluation Committee, whose members include the Chair or President, who will lead the process and shall be designated by the Secretary. The Evaluation Committee must base the evaluation of responses only on the criteria established in the RFQ. The Procurement Division will provide the necessary guidance to the designated Evaluation Committee members to support a standardized and consistent evaluation process.
  - d. **Development of a Short-list:** Following the evaluation of the statements of qualifications, the Evaluation Committee will prepare a report that recommends that no less than three firms will be short-listed.
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- e. **Short listed selection by the Bid Board:** The Bid Board shall review the recommendation of the Evaluation Committee and shall make the final selection. The final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work. All firms on the final selection list are considered selected firms with which the Contracting Officer or its authorized designee may negotiate. The short-listed respondents will be notified of the RFQ results through a Notice of Selection issued by the Bid Board.
- f. **Negotiations with short listed respondents:** After short-listing respondents, the Contracting Officer or its authorized designee may negotiate a contract with the highest-ranked respondent for architectural and engineering services with a compensation which the procuring entity determines is fair and reasonable. In making such determination, the procuring entity shall take into consideration the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof. An ICE of the cost of architectural-engineering services shall be prepared and furnished to the Contracting Officer before commencing negotiations for each proposed contract. If negotiations do not result in an agreement, the procuring entity shall terminate negotiation and undertake negotiations with the second- highest ranked respondent and continue with succeeding respondents until an agreement is reached. Once negotiation with any respondent is terminated, such respondent is eliminated from further consideration. Should the Contracting Officer or its designee be unable to negotiate a satisfactory contract with any of the selected firms, it shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this section until an agreement is reached.

### **Section 8.6.3. Prequalification of Sources or Prequalification Lists (PQLs)**

- a. **Conditions for Use:** Prequalification lists (PQL's) may be used when necessary to allow aspects of the competitive process to be addressed in a two-phased selection process so that selected sources on the PQL can be subsequently engaged on an accelerated or more efficient basis. This method provides convenience in instances where a general service need is identified, yet the specific scope of work is being develop as program needs evolve. PQL's may result in a list of sources determined to be qualified for a particular procurement with proven competence to perform in the required manner. Where a PQL has been completed and the pool of qualified providers has been established, the solicitation of proposals to that PQL is not required to be publicly advertised. The need for the required services and uses of the PQL must be identified in writing by the area requesting the procurement. PQL's must receive the submission of two or more responses to be deemed in compliance with full and open competition.
  - b. **Form of Solicitation:** The first phase selection process of the PQL shall initiate through the issuance of a Request for Qualifications (RFQ). The RFQ shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors. A mechanism for fairly and thoroughly evaluating the responses shall be established before the RFQ is issued. The criteria for selecting Pre-Qualified sources for each project or task shall be developed by the area requesting the procurement and will vary, depending upon the expertise needed and requirements of the applicable project or task. Criteria could involve requiring a firm's personnel to have a certain demonstrated experience and proficiency in a certain subject/area depending on
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the specific requirements of the project or services; demonstrated understanding of the requirement; and experience and professional qualifications of the firm staff to be assigned to the project; and overall performance record of the firm.

- c. **Evaluation:** The qualifications for the RFQ will be evaluated by an Evaluation Committee. The Evaluation Committee must base the evaluation and subsequent recommendation on the criteria established in the RFQ. The Procurement Division will provide the necessary guidance to the designated Evaluation Committee members to support a standardized and consistent evaluation process.
- d. **Selection by the Bid Board:** The Bid Board shall make the final selection based on the RFQ after considering the recommendation of the Evaluation Committee. The selected respondent(s) will be notified through a Notice of Selection issued by the Bid Board. Where a PQL has been completed and the pool of qualified providers has been established, the procuring entity will initiate a second phase selection process with the solicitation of proposals. The second phase selection process will not require to be publicly advertised. Proposals from the selected respondents may be solicited by means of a Small Purchase or Request for Proposals, as defined in this Manual. After the particular procurement, the award will be based on the requirements specified in the method of acquisition used.

### **Section 8.7 Noncompetitive Proposals Method and Emergency Purchases**

**General:** Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source, based on a good faith review of available sources.
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- c. HUD expressly authorizes the use of noncompetitive proposals in response to a written request from PRDOH; or
- d. After solicitation of several sources, competition is determined inadequate. Adequate competition means two or more responsible offerors, competing independently, submit priced offers that satisfy the requirements of the solicitation process. The procuring entity shall maintain detailed records substantiating the lack of competition.

**Justification:** Each procurement based on Noncompetitive Proposals shall be supported by a written justification. The justification shall be approved in writing by the Contracting Officer. Poor planning or lack of planning is not justification for emergency or sole source procurements. The justification, to be included in the procurement file, should include the following information:

- 1. Description of the requirement;
  - 2. History of prior purchases and their nature (Competitive vs. Noncompetitive), if available;
  - 3. The specific exception of any of the **four (4)** indicated in this Section, which applies;
  - 4. Statement as to the circumstances that require award by Noncompetitive Proposals;
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5. Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);
6. Determination on cost reasonableness; and
7. Signature by the User Area.

### **Section 8.8 General Services Administration (GSA) Purchases**

**General:** Procurements may be conducted using the General Services Administration (GSA) established price schedules. The PRDOH Procurement Director shall evaluate and determine whether the GSA procurement will be allowable for the procuring entity. This written determination must be included in the procurement file.

- a. **Form of Solicitation:** GSA procurements shall be solicited through the issuance of a request for Quotations (rfQ), including the Scope of Work (SOW) and the evaluation criteria. The SOW shall include a description of work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements. Request for Quotations shall clearly identify the supplies or services evaluation criteria, the importance and relative value of each of the criteria and any sub-factors and price. GSA schedule contractors that meet the supplies or services criteria indicated in the rfQ will be provided the opportunity to respond to the procurement.
- b. **Evaluation:** GSA procurements below the Simplified Acquisition Threshold will be evaluated by a Procurement Specialist. GSA procurements in excess of the Simplified Acquisition Threshold, will be evaluated by an Evaluation Committee whose members, including the President will lead the process, shall be designated by the Contracting Officer. The Evaluation Committee shall evaluate all responses received using the evaluation criteria provided to the schedule contractors.

The Procurement Division will seek to:

- Ensure Evaluation Committee composition is made up of **three (3)** or more members, having an odd number of members (3, 5, or 7), and an alternate member. At least, **one (1)** of the members must have general experience or knowledge in the subject/area depending on the requirements of the project or services.
  - Provide the necessary guidance to designated Evaluation Committee members in order to support a standardized and consistent evaluation process.
- c. **Negotiations:** After the evaluation of the responses, the Evaluation Committee or the Procurement Specialist may recommend negotiations with Contractors that have a reasonable chance of being selected for award ("Qualified Contractor"). The determination must be based on the score of the Quotations, as these have been evaluated and rated in accordance with the requirements established in the rfQ. The primary objective of discussions is to maximize the procuring entity's ability to obtain the best possible offers. The Procurement Division must notify the recommendation to negotiate in order to obtain the Contracting Officer's authorization prior to negotiation. Proposers shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their responses. A common deadline shall be established for receipt of responses revisions based on negotiations. During negotiations, the Procurement Division may inform the Proposer that its price is considered too high or too
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low, and provide clarifications as to assure full understanding of a conformance to the rfQ requirements. Nonetheless, the Procurement Division should not:

- Provide information about any other quote.
  - Suppliers shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award.
- d. **Award:** After evaluation of the revised Quotations, if any, the Contract shall be awarded to the Responsible contractor that provides the greatest overall benefit in response to the requirements and results in the lowest overall cost alternative (considering price special requirements and administrative costs etc.) to meet the procuring entity needs.

### **Section 8.9 Cooperative Purchasing/ Intergovernmental or Interagency Agreements**

**General:** Agreements between the procuring entity and other government entities to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a procurement process shall be based on economy and efficiency.

- a. PRDOH may either participate in, sponsor, or conduct, a Cooperative Purchasing/Intergovernmental or Interagency Agreement for the procurement of any supplies, services, or construction with one or more governmental agencies, or entities.
- b. All Cooperative Purchasing/Intergovernmental or Interagency Agreements shall be through contracts or purchase orders awarded through full and open competition, and consistent with the standards of this Manual.
- c. If used, the Cooperative Purchasing/Intergovernmental or Interagency Agreements shall establish who is authorized to purchase on behalf of the participating entities and shall specify acceptance, termination, payment, and other relevant terms and conditions.
- d. The procuring entity may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs.

## **ARTICLE IX CANCELLATION OF SOLICITATIONS**

### **Section 9.1 Prior to Deadline to Receive Offers**

All solicitations may be cancelled by the procuring entity, or by PRDOH in case the procuring entity is a subrecipient, before the deadline in which the offers must be submitted or received in the procuring entity if:

- a. The procuring entity or PRDOH in case the procuring entity is a subrecipient, no longer requires the goods, services or construction works solicited; or
  - b. Funding is no longer available for the procuring entity's procurement of goods or services;
  - c. Amendments proposed to the initial solicitation are material and the procuring entity or PRDOH in case the procuring entity is a subrecipient, determines that a new solicitation would be most advantageous for the agency; or
  - d. For just cause, when it is in the best interest of the procuring entity or PRDOH in case the procuring entity is a subrecipient.
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## Section 9.2 After the Deadline for Submitting Offers

All solicitations may be cancelled by the procuring entity or by PRDOH in case the procuring entity is a subrecipient, after the advertised deadline for submission of Offers and all Offers received may be returned if:

- a. The procuring entity or PRDOH in case the procuring entity is a subrecipient, no longer requires the goods, services or construction works solicited; or
- b. Ambiguous or otherwise inadequate specifications were included in the solicitation; or
- c. The solicitation did not include all the selection or evaluation factors that are significant for the procuring entity or PRDOH in case the procuring entity is a subrecipient; or
- d. Changes are substantial enough as to exceed what potential offerors reasonably could anticipate, so that additional offerors would have submitted offers had the changes been known to them, the procuring entity should cancel the Solicitation.
- e. The projected cost exceeds available funds and it is not appropriate to adjust the solicited quantities to fit within available funds; or
- f. There is reason to believe that Offers are not bona fide, or may not have been prepared separately through open competition, or may be collusive; or
- g. No offers were received by the procuring entity in response to the solicitation; or
- h. For just cause, when it is in the best interest of the procuring entity or PRDOH in case the procuring entity is a subrecipient.

## Section 9.3 Cancellation Notice

The reason for cancellation of the solicitation shall be set forth in writing by the Contracting Officer or PRDOH Secretary, in case the procuring entity is a subrecipient, and will be included in the Procurement File and notified to all Suppliers, Offerors and Bidders who participated in the process. The Cancellation Notice will inform that an opportunity will be given to compete in any other process thereto or any purchase of similar items.

## ARTICLE X OFFICIAL RECORDS

The Procurement File shall constitute the exclusive basis for actions by the procurement entity in the award of any Contract or Purchase Order, as applicable, and for any subsequent administrative and/or judicial proceedings or review related thereto.

The Procurement File shall be a public record, except for those documents and/or information which the Secretary determines, in writing, to be privileged and/or confidential under applicable laws. In the event that a proposer submits a redacted copy of the proposal to address privileged information, that copy will be available for public review after the award has been made. Except as otherwise provided herein, after the award of each Contract or Purchase Order, the Procurement File shall be available for public inspection. The Procurement File shall be kept by PRDOH or the procuring entity for a period of **five (5) years** after grant close-out with HUD. Exceptions for longer file retention include: audits started before the end of the **three (3) year** period; HUD notifies in writing to extend retention period; Program Income after the period of performance; and Real property monitoring.

Each Procurement File shall include the following information and documents concerning each procurement process:

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- a. Solicitation documents such as, without limitation, the user request, Scope of Work, evaluation criteria, and terms and conditions of the solicitation;
- b. The ICE including any amendments and supporting documents or data used to provide the estimate;
- c. For all procurement actions, the rationale for the selected procurement method must be documented in the Procurement File;
- d. Evaluations, recommendations, and determinations taken by the procuring entity;
- e. Advertisements and their details including those to comply with MBE/WBE/Section 3 requirements;
- f. Documents or information requested, considered, or received by the procurement entity, including questions or comments; and
- g. Offers received during the solicitation process.

**For additional information, see the CDBG-DR Recordkeeping Policy published at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov).**

## **ARTICLE XI CONTRACT TYPES**

In every procurement process, the procuring entity will use the type of Contract that will serve its best interests and follows all applicable Federal laws, regulations and local laws. The preferred types of Contracts are Firm Fixed-Price Contracts and Requirement Contracts. Contracts using "Cost-Plus Percentage of Cost" or "Percentage of Construction" cost are not allowed. However, other types of Contracts may be used. Among all types of Contracts, the most used are the following:

- a. Fixed-Price Contract (Firm Fixed-Price and Fixed-Price)
- b. Cost-Reimbursement Contracts
- c. Cooperative Purchasing/Intergovernmental Agreements for Procurement Activities

Contractual requirements, including the required contract provisions found in Part 200 Appendix A, are included in the Contracts Manual for the CDBG-DR Program and Subrecipient Agreements Manual for the CDBG-DR Program. **For additional information, see these manuals published at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov).**

## **ARTICLE XII CONTRACTOR QUALIFICATIONS AND DUTIES**

### **Section 12.1 Determination of Contractor Eligibility and Responsibility**

- a. Prior to the award of a contract with a prime contractor, the procuring entity must obtain contractor and First Tier Subcontractor clearance, if applicable, by taking the following steps:
    1. Search <https://www.sam.gov/portal/public/SAM/> and obtain documentation of the search results to confirm eligibility of the contractor.
    2. Search [https://www.hud.gov/topics/limited\\_denials\\_of\\_participation](https://www.hud.gov/topics/limited_denials_of_participation) and obtain documentation of the search results to confirm eligibility of the contractor.
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- b. The procuring entity must award Contracts or Purchase Orders only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- c. The procuring entity reserves its right to not enter into a Contract or Purchase Order with a person, organization, or entity against whom a Determination of Non-Responsibility has been previously made by PRDOH or another government agency.

### **Section 12.2 Subcontractor Clearance**

The prime contractors have the duty to verify subcontractor eligibility. The prime contractor must also use the web site: <https://www.sam.gov/portal/public/SAM/> to determine if a subcontractor has been debarred at a federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, the procuring entity urges prime contractors to closely scrutinize subcontractors. If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated, and the matter reported to the procuring entity.

### **ARTICLE XIII LOW AND VERY LOW- INCOME PERSONS OR FIRMS PARTICIPATION**

Section 3 of the Housing and Urban Development Act of 1968 (**Section 3**), as amended, 12 U.S.C. §1701u, requires that recipients, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part by CDBG-DR funding, to the greatest extent feasible, extend hiring opportunities and contracts to Section 3 eligible residents and businesses. Section 3 eligible residents are low- and very low-income persons, particularly those who live or reside in public or government assisted housing or meet the income limits identified by HUD.<sup>4</sup>

Businesses can qualify as Section 3 in any one of three (3) ways: (a) If your business is owned in equal to or in excess of fifty-one percent (51%) by someone who is a Section 3 Individual; or (b) if thirty percent (30%) of your staff meets the definition of a Section 3 individual; or (c) if your business has a firm commitment to provide twenty-five percent (25%) of the total dollar amount of subcontracts to a Section 3 business.

HUD has developed a business registry for businesses who have identified themselves as a Section 3 business in order to facilitate the process of engaging in best efforts.<sup>5</sup> The procuring entity shall also provide a preference of **five (5)** points in the evaluation criteria of the method of rating, for major participation of Section 3 businesses concerns in the Formal Bid procurement process.

The procuring entity will include the Section 3 clause in every Contract or Subcontract subject to compliance with regulations in 24 C.F.R. Part 135. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 will result in the termination of the Contract or Subcontract.

**For additional information, see CDBG-DR Section 3 Policy published at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov).**

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<sup>4</sup> <https://www.huduser.gov/portal/datasets/il.html#null>

<sup>5</sup> <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>

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## ARTICLE XIV CONFLICTS OF INTEREST AND ETHICS IN PUBLIC CONTRACTING

### Section 14.1 General

Since the awarding of a Contract or Purchase Order involves the disbursement of taxpayers' funds, the procuring entity officials, agents, subrecipients, subgrantees, and employees, as well as the Contractors involved in each procurement process owe a fiduciary duty to the procuring entity. Therefore, no procuring entity official, agent, subrecipients, subgrantees or employee shall participate directly or indirectly in the selection, award, administration, or monitoring of any Contract or Purchase Order if a conflict of interest, real or apparent, results.

**For additional information, see the CDBG-DR Conflict of Interest and Standards of Conduct Policy (COI Policy) published at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov).**

## ARTICLE XV ADMINISTRATIVE AND APPELLATE REMEDIES

### Section 15.1 Administrative Procedure (Request for Reconsideration and Judicial Review) Determinations by PRDOH

Disputes, bid protests, and other Contractor claims related to Bids or Contracts, which amounts exceed the Small Purchase Threshold from PRDOH shall be handled in accordance with this Manual. Any person, party or entity that considers itself having been adversely affected by a decision of the PRDOH Bid Board made under the provisions of this Manual, may file a Request for Reconsideration with the PRDOH's Bid Review Board within **twenty (20) calendar days** from the date on which a copy of the Award Notice or Resolution was filed in the record of the agency, in accordance with Section 3.19 of LPAU, 3 L.P.R.A. §9659. Simultaneously, with the filing of the Request for Reconsideration, said person, party, or entity shall submit a copy of the Request to all the parties in the procedure and to PRDOH or the procuring entity. The PRDOH's, or the procuring entities' Bid Review Board shall consider the motion within **thirty (30) calendar days** from filing. The Bid Review Board may extend the term once, for an additional term of **fifteen (15) calendar days**. If the Bid Review Board makes a determination upon consideration, the term to request a judicial review shall begin to elapse from the date of mailing of the notice of the Bid Review Board's decision settling the motion in the case record. If the Bid Review Board fails to act on the motion for reconsideration within **thirty (30) calendar days** after the filing thereof, it shall be understood that the motion was outright denied and the term for judicial review shall begin to elapse from said date.

A petition for Judicial Review may be filed before the Court of Appeals of Puerto Rico within **twenty (20) calendar days** after a copy of the notice has been filed by the Bid Review Board or within **twenty (20) calendar days** after the Bid Review Board outright denied the reconsideration request. See Act No. 201-2003, as amended, known as the Judiciary Act of the Commonwealth of Puerto Rico of 2003, 4 L.P.R.A. § 24 *et seq.*, and section 4.2 of LPAU, 3 L.P.R.A. §9672.

The mere presentation of a Request for Reconsideration will not have the effect of halting the contested award. The Bid Review Board may or may not consider the Request for Reconsideration. The terms in relation to this action or lack of action, as well as its Judicial review, if any, shall be those established in LPAU.

### Section 15.2 Administrative Procedure (Request for Reconsideration and Judicial Review) for Determinations by State Agencies, Public Corporations or other Governmental Instrumentalities

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Any person, party or entity that considers itself having been adversely affected by a decision of the Bid Board of a state agency, made under the provisions of this Manual, including any board, body, court examiner, public corporation, commission, independent office, division, administration, bureau, department, authority, officer, person, entity or any instrumentality of the Government of Puerto Rico or administrative body, as defined in Section 1.3 of LPAU, 3 L.P.R.A. §9603(a) must follow the corresponding governmental instrumentality Administrative Procedure and in compliance with the LPAU (3 L.P.R.A. §9603, *et seq.*).

### **Section 15.3 Administrative Procedure (Request for Reconsideration and Judicial Review) for Determinations by Municipalities**

Any person, party or entity that considers itself having been adversely affected by a adjudication of the Municipality Bid Board made under the provisions of this Manual, may file a judicial review request before the Court of Appeals within the terms established in Autonomous Municipalities Act, No. 81-1991, (21 L.P.R.A. §4001, *et seq.*).

### **Section 15.4 Administrative Procedure (Request for Reconsideration and Judicial Review) for Private Procuring Entities**

Any person, party, or entity that considers itself having been adversely affected by a decision of the Private Procuring Entity made under the provisions of this Manual, may file a Request for Reconsideration with the PRDOH's Bid Review Board within **twenty (20) days** from the date on which a copy of the Award Notice or Resolution was filed in the record of the Private Entity. Simultaneously, with the filing of the Request for Reconsideration, said person, party, or entity shall submit a copy of the Request to all the parties in the procedure and to the Private Procuring Entity. The PRDOH's Bid Review Board shall consider the motion within **thirty (30) days** from filing. The Bid Review Board may extend the term once, for an additional term of **fifteen (15) calendar days**. If the Bid Review Board makes a determination upon consideration, the term to request a judicial review shall begin to elapse from the date of mailing of the notice of the Bid Review Board's decision settling the motion in the case record. If the Bid Review Board fails to act on the motion for reconsideration within **thirty (30) days** after the filing thereof, it shall be understood that the motion was outright denied and the term for judicial review shall begin to elapse from said date.

A petition for Judicial Review may be filed before the Court of Appeals of Puerto Rico within **twenty (20) days** after a copy of the notice has been filed by PRDOH's Bid Review Board or within **twenty (20) days** after the Bid Review Board outright denied the reconsideration request. See Act No. 201-2003, as amended, known as the Judiciary Act of the Commonwealth of Puerto Rico of 2003, 4 L.P.R.A. § 24 *et seq.*, and section 4.2 of LPAU, 3 L.P.R.A. §9672.

The mere presentation of a Request for Reconsideration will not have the effect of halting the contested award. The Bid Review Board may or may not consider the Request for Reconsideration. The terms in relation to this action or lack of action, as well as its Judicial review, if any, shall be those established in LPAU.

## **ARTICLE XVI PURCHASE THRESHOLDS**

The threshold amounts established for each purchase may be modified by the Federal Government from time to time. This Manual will be considered automatically modified whenever the Federal Government modifies the thresholds for every type of procurement without the need to amend the Manual and such modifications will apply to CDBG-DR procurements.

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**ARTICLE XVII SEVERABILITY CLAUSE**

If any provision of this Manual, or the application thereof to any person, partnership, or corporation, or circumstance, is deemed invalid, illegal, or incapable of being enforced to any extent by a competent court, the remainder of this Manual, and the application of such provisions, will not be affected. All valid applications of this Manual shall be severed from any applications deemed invalid, leaving the valid applications in full force.

**ARTICLE XVIII PREVAILING VERSION**

This Manual repeals the "Procurement Manual and Contractual Requirements for CDBG-DR", Regulation No. 9075 of February 26, 2019; and any other previously issued regulation, manual, administrative order, circular letter regarding this matter. This Manual is originally adopted in the English Language, therefore a translation to the Spanish language is included. In case of any inconsistency between both versions, the English version will prevail.

**ARTICLE XIX EFFECTIVE DATE**

This Manual shall take effect thirty (30) days after its filing date to Department of State of the Government of Puerto Rico.

APPROVED in San Juan, Puerto Rico, on the 18 of June, 2020.



Luis C. Fernández Trinchet, Esq., CFA  
Secretary

Approval Date: \_\_\_\_\_

Filing Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

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