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Department of Housing

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Approved: Hon. Luis G. Rivera Marín  
Secretary of State

A handwritten signature in black ink, appearing to read "F. Vega Fournier".

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## **Procurement Manual and Contractual Requirements for CDBG-DR**

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Puerto Rico Department of Housing



**Table of Contents**

**ARTICLE I GENERAL PROVISIONS ..... 4**  
 SECTION 1 TITLE..... 4  
 SECTION 2 LEGAL BASIS ..... 4  
 SECTION 3 PURPOSE..... 5  
 SECTION 4 APPLICATION..... 5  
 SECTION 5 COMPETITION..... 5

**ARTICLE II DEFINITIONS..... 6**  
 SECTION 1 TERMS AND PHRASES..... 6  
 SECTION 2 INTERPRETATION ..... 10

**ARTICLE III PROCUREMENT ADMINISTRATION ..... 10**  
 SECTION 1 CONTRACTING OFFICER ..... 10  
 SECTION 2 PROCUREMENT DEPARTMENT PERSONNEL ROLES AND RESPONSIBILITIES ..... 11  
 SECTION 3 PROCUREMENT PROCESS ..... 13

**ARTICLE IV DELEGATION OF PROCUREMENT AUTHORITY ..... 13**

**ARTICLE V PROCUREMENT OF RECOVERED MATERIALS..... 13**

**ARTICLE VI PROCUREMENT MANUAL FORMS ..... 13**  
 SECTION 1 GENERAL RULE..... 13  
 SECTION 2 SPECIFIC FORMS..... 13

**ARTICLE VII MINORITY, SMALL AND SECTION 3 BUSINESS PARTICIPATION ..... 14**  
 SECTION 1 GENERAL ..... 14  
 SECTION 2 AFFIRMATIVE ACTION STEPS..... 14

**ARTICLE VIII METHODS OF PROCUREMENT ..... 15**  
 SECTION 1 RECOGNIZED METHODS OF PROCUREMENT ..... 15  
 SECTION 2 GENERAL RULES ..... 15  
 SECTION 3 MICRO PURCHASES ..... 17  
 SECTION 4 SMALL PURCHASES METHOD..... 17  
 SECTION 5 SEALED BIDDING METHOD..... 18  
 SECTION 6 COMPETITIVE PROPOSALS METHOD ..... 21  
 SECTION 7 NONCOMPETITIVE PROPOSALS METHOD AND EMERGENCY PURCHASES..... 23  
 SECTION 8 GENERAL SERVICES ADMINISTRATION (GSA) PURCHASES ..... 25

**ARTICLE IX COST OR PRICE ANALYSIS ..... 26**  
 SECTION 1 GENERAL ..... 27  
 SECTION 2 COST ANALYSIS..... 27  
 SECTION 3 PRICE ANALYSIS ..... 28

**ARTICLE X CANCELLATION OF SOLICITATIONS..... 28**  
 SECTION 1 PRIOR TO DEADLINE TO RECEIVE OFFERS ..... 28  
 SECTION 2 AFTER THE DEADLINE FOR SUBMITTING OFFERS..... 29  
 SECTION 3 CANCELLATION NOTICE..... 29  
 SECTION 4 UNREASONABLE PRICES..... 29

**ARTICLE XI OFFICIAL RECORDS..... 29**

**ARTICLE XII CONTRACT TYPES AND CLAUSES ..... 30**  
 SECTION 1 CONTRACT TYPES..... 31  
 SECTION 2 CONTRACT AND PURCHASE ORDER CLAUSES..... 33



**ARTICLE XIII CONTRACT MODIFICATIONS AND CHANGE ORDERS..... 35**  
 SECTION 1 GENERAL ..... 35  
 SECTION 2 CONTRACT FORMS AND TERM ..... 36  
 SECTION 3 PROCEDURES..... 37  
 SECTION 4 RECORDS ..... 38

**ARTICLE XIV CONTRACTOR QUALIFICATIONS AND DUTIES ..... 38**  
 SECTION 1 DETERMINATION OF CONTRACTOR ELIGIBILITY AND RESPONSIBILITY ..... 38  
 SECTION 2 SUBCONTRACTOR CLEARANCE ..... 39

**ARTICLE XV CONTRACT ADMINISTRATION AND MONITORING ..... 40**  
 SECTION 1 GENERAL ..... 40  
 SECTION 2 DETAILS OF THE USER AREA'S RESPONSIBILITIES..... 40  
 SECTION 3 ACCEPTANCE OR REJECTION OF GOODS AND SERVICES ..... 41  
 SECTION 4 SUSPENSION AND DEBARMENT ..... 41

**ARTICLE XVI SECTION 3: LOW AND VERY LOW- INCOME PERSONS OR FIRMS PARTICIPATION ..... 42**  
 SECTION 1 GENERAL ..... 42  
 SECTION 2 AFFIRMATIVE ACTION ..... 42

**ARTICLE XVII CONFLICTS OF INTEREST AND ETHICS IN PUBLIC CONTRACTING..... 44**  
 SECTION 1 GENERAL ..... 44  
 SECTION 2 PROHIBITIONS..... 44

**ARTICLE XVIII ADMINISTRATIVE AND APPELLATE REMEDIES..... 45**  
 SECTION 1 GENERAL ..... 45  
 SECTION 2 ADMINISTRATIVE PROCEDURE (REQUEST FOR RECONSIDERATION AND JUDICIAL REVIEW) ..... 45

**ARTICLE XIX SEVERABILITY CLAUSE..... 46**

**ARTICLE XX PREVAILING VERSION..... 46**

**ARTICLE XXI EFFECTIVE DATE ..... 46**



## ARTICLE I GENERAL PROVISIONS

### Section 1 Title

This legal body shall be known and cited as the "Puerto Rico Department of Housing Procurement Manual and Contractual Requirements for CDBG-DR".

### Section 2 Legal Basis

This Manual is adopted pursuant to the authority granted to the Puerto Rico Department of Housing (PRDOH) pursuant to Law Number 97, approved in June 10th, 1972, known as the "Department's Organic Act", and in accordance with (i) Law Number 38, approved in June 30, 2017, as amended, known as the "Puerto Rico Uniform Administrative Procedure Act (PRUAPA)", (ii) Part 200 of Title 2 of the Code of Federal Regulations ("2 CFR part 200"), as in effect on the date hereof and as the same may be hereinafter amended, (iii) Public Law 115-56, the Supplemental Appropriations for Disaster Relief Requirements, 2017 (the "Appropriations Act"), (iv) the U.S. Department of Housing and Urban Development ("HUD") issued Federal Notice FR-6066-N-01 and all subsequent waivers and amendments issued thereto (collectively, the "Notice") (v) Regulation No. 7854 of May 21, 2010, on the Department and its Components' Purchases of Goods and Non Personal Services, (vi) Regulation No. 6106 of February 25, 2000, on the Department's Bid Board ("Regulation No. 6106"), as amended, and (vii) Regulation No. 6793 of March 29, 2004, on the Department's Bid Revision Board ("Regulation No. 6793"), as amended, will complement this Manual.

In its administration of the CDBG-DR Program, PRDOH will use its own procurement procedures as set forth under this Manual which reflect applicable state and local laws and regulations providing for full and open competition. Moreover, PRDOH has incorporated into all of its required procedures an evaluation of cost or price of the product or service to be procured under the program. These regulations and requirements which are based upon 2 CFR 200.318-200.326 shall be imposed on all subgrantees and/or subrecipients of the CDBG-DR Program. Prior to the commencement of any procurement action covered by this Manual, the subgrantee or subrecipient shall receive specific training detailing the rules and requirements of this Manual by a PRDOH Procurement Specialist. PRDOH shall be required to retain records confirming that the training occurred prior to the commencement of any procurement action. Furthermore, the PRDOH Procurement Department shall review the personnel identified by the subgrantee or subrecipient to verify that said personnel possesses the necessary knowledge and understanding of the Manual and federal procurement requirements. PRDOH shall retain documentation certifying this confirmation in the subgrantee's or subrecipient's Program file.

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 3 Purpose

The purpose of this Manual is to ensure procurements are conducted in a manner providing full and open competition or fair treatment of all persons or entities involved in each and every PRDOH procurement process funded totally or partially with federal funds; to assure that goods, services and construction works are procured efficiently, without unjustified delay, and at the lowest cost available to the PRDOH; to promote competition in contracting with the PRDOH; to provide safeguards for maintaining a procurement system of quality and integrity; and to assure that such procurement processes are in full compliance with federal laws, rules and regulations, including but not limited to, 2 CFR Part 200, in particular, 2 CFR 200.318-326, the Appropriations Act, the Federal Register Notice and applicable Federal, State and local laws, rules and regulations.

This Manual establishes standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services for PRDOH's CDBG-DR programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable local and Federal laws, regulations and executive orders.

### Section 4 Application

The procurement policies and procedures contained herein are applicable to every procurement action under PRDOH CDBG-DR programs and activities whether funded in whole or in part CDBG-DR funds (hereinafter referred to as a "procurement process" or "procurement processes"). These Regulations shall apply to the procurement by Non-Federal Entities of goods, products and/or services funded, in whole or in part, with the CDBG-DR appropriated by the Disaster Relief Appropriations Act 2018 (Pub. L 115-56). The PRDOH, in the administration of CDBG-DR funds allocated under the Notice, has elected to adopt these procurement policies and procedures for itself and all subrecipients. Accordingly, when procuring property and services under the CDBG-DR grants, the PRDOH and all subrecipients (public and private) shall follow these Procurement and Acquisition Regulations (the "Regulations").

### Section 5 Competition

- A. All procurement transactions must be conducted in a manner providing full and open competition in accordance with 24 CFR 570.489(g) and 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, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  1. Placing unreasonable requirements on firms to qualify to do business;
  2. Requiring unnecessary experience and excessive bonding;



3. Noncompetitive pricing practices between firms 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 to be offered and describing the performance or other relevant requirements of the procurement; and
  7. Any arbitrary action in the procurement process.
- B. The Non-Federal 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, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing 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, given the nature and size of the project, to compete for the contract.

## ARTICLE II DEFINITIONS

### Section 1 Terms and Phrases

For the purposes 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 who is authorized to commit a participant in a covered transaction.
- b. **Architect/Engineer (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 person licensed, registered, or certified to provide those services; or,
  - ii. Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property.
- c. **Award** – Written statement by which the PRDOH accepts a bid or proposal in a procurement process.
- d. **Bid** – An offer in response to invitations for bids (sealed bidding).
- e. **Bid Board** – Organization of the Department comprised of five (5) members each designated by the Secretary by an Administrative Order. The members of the Board may be officials or employees of the Department and ascribed agencies. One of the members must be the Deputy Secretary of the Department, who will act as President of the Board. Also, one of the members shall be a licensed Lawyer, according to the laws of Puerto Rico. Three of the five members can constitute quorum. The Board will oversee the mission to evaluate, award or decide the bids or Request for Proposals for the acquisition of non-personal goods or non-personal services and professional



- services in a formal procurement process to be executed by PRDOH, according to the applicable regulations. (Article 2 of Regulation Num. 6106, Bid Board Regulation of the Department and its Affiliated Agencies of February 25, 2000)
- f. **Bid Review Board** - Organization of the Department comprised of three (3) members designated by the Secretary. One of these members will be designated by the Secretary as President of the Board, who shall be a licensed Lawyer, according to the laws of the Government of Puerto Rico. This Board has exclusive authority and jurisdiction to evaluate and solve appeals submitted by persons affected by decisions of the Bid Board. (Article 5 of Regulation Num. 6793, Regulation of the Bid Review Board of March 29, 2004)
  - g. **PRDOH** shall mean Puerto Rico Department of Housing.
  - h. **CDBG** shall mean Community Development Block Grant.
  - i. **CDBG-DR** shall mean Community Development Block Grants for Disaster Recovery.
  - j. **Change Order** - A written modification, agreed upon by both parties, after evaluation of cost reasonableness and whether the change is a material change in scope of the original contract, which directs the contractor to make a change.
  - k. **Competitive Proposals Method** - Solicitations under negotiated procedures and are used in negotiated acquisitions to communicate program requirements to prospective contractors and to solicit proposals.
  - l. **Competitive Range** - In the Competitive Proposals Method, specifically the Request for Proposal (RFP), after the Evaluation Committee has evaluated all the technical proposals, and considering the proposed costs/prices, it is the Proposals determined by the Contracting Officer to have a reasonable chance to receive the award.
  - m. **Contract** - Contract means a legal instrument by which a non-Federal entity (i.e. PRDOH or its subgrantees) purchases property or services needed to carry out the project or program under a Federal award.
  - n. **Contracting Officer** - PRDOH Secretary or his/her designee.
  - o. **Contractor** - A Vendor, Supplier, Offeror, or Bidder, as applicable, who is awarded and executes a Contract (as defined hereinabove) or a Purchase Order with PRDOH.
  - p. **Cooperative Purchasing/Intergovernmental Agreements** - Agreements between the PRDOH and other government entity to purchase or use common supplies, equipment, or services. The decision to use an interagency agreement instead of conducting a direct procurement shall be based on economy and efficiency, in accordance with 2 CFR 200.318(e). If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. PRDOH 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. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR 200.318 (e) and (f).
  - q. **Director of Disaster Recovery** - the Director of the Disaster Recovery Division of the Puerto Rico Department of Housing.



- r. **Emergency** - Situation which causes unexpected and unforeseen public needs and which requires immediate action by the PRDOH due to the danger that it represents to the life, health or public safety.
- s. **Evaluation Committee** - Administrative body comprised of at least three (3) PRDOH employees appointed by the Secretary to evaluate proposals (mostly execute rating and ranking) in a competitive procurement process. PRDOH should designate a Chairman to lead the process. The Procurement Area will provide a standardized orientation to the Evaluation Committee participants in every Competitive RFP/RFQ procurement process to ensure adequate and consistent methodology and parameters in each process.
- t. **Independent Cost Estimate (ICE)** - An independent analysis of the estimate of the costs of the goods or services to be acquired, prepared by the PRDOH staff or a third-party prior to publishing a solicitation for offers. The degree of analysis will depend on the size and complexity of the purchase.
- u. **Invitation for Bids (IFB)** - The written solicitation for bids, publicly advertised to prospective bidders, for the procurement of goods, work or services, excluding AE Services for PRDOH, under the Sealed Bidding Method.
- v. **Micro Purchase Method** - Purchases of supplies or services using simplified acquisition procedures, the aggregate dollar amount which does not exceed the Micro Purchase Threshold (\$10,000.00) or less, except for acquisitions of construction subject to Davis-Bacon Act, \$2,000.00 (2 CFR 200.320(a))
- w. **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.
- x. **Modification** - Unilateral or bilateral written revision or change to a Contract or Purchase Order within the original scope, thereof, after the award and execution, or during the performance of such Contract or Purchase Order.
- y. **Negotiation** - Discussions with Offers' or Proponents in the competitive range regarding technical and/or price proposals when awarding a contract using the Competitive Proposals Method of procurement or when issuing modifications to existing contracts or other required discussions with Offers' in other procurement processes.
- z. **Noncompetitive Proposal Method** – Procurement under 2 CFR 300.320 through solicitation of a proposal from only one source, or after solicitation of several sources, competition is determined inadequate.
  - aa. **Offer** - A response to a solicitation by the PRDOH that, if accepted, would bind the Offer or Proponent to perform the resultant Contract.
  - bb. **Proponent** - A person or legal entity that responds to a solicitation issued by the PRDOH in a Competitive Proposal Method procurement.
  - cc. **Proposal** - The Offer submitted by a potential Contractor in the Competitive or Non-competitive Proposals Method of procurement.
  - dd. **Qualification Based Selection Method (QBS)** - A procurement method conducted using a solicitation denominated Request for Qualifications (RFQ). Use for the QBS is limited and is different, primarily, from the RFP method in that the PRDOH first selects





the highest ranked Respondent on technical factors and then negotiates price. The most common use of RFQ's is for Architect/Engineer (A/E) Contracts. RFQ's can also be used to select development partners for mixed financed projects, or when specific skills and experience are needed.

- ee. **Quotation** - A price or offer submitted by an Offeror or Supplier under the Small Purchase Procurement Method.
- ff. **Request for Proposals (RFP)** - Solicitation method used under both the Competitive or Noncompetitive methods of procurement. Proposal evaluation and Contractor selection are based on the evaluation criteria and factors for award as stated in the RFP. Please see the Financial Management Guide for factors considered in evaluation of proposals for audit services. Contract award is based on the best proposal responsive to the requirements of the statement of work resulting in the greatest benefit and best value to the PRDOH, which may not be primarily determined based on price.
- gg. **Responsible Bidder** - A Bidder who can comply with the required or proposed delivery of goods or performance of services; and is otherwise qualified and eligible to receive an award under applicable laws and regulations, including the fact that the bidder is not suspended, debarred, or under a HUD imposed Limited Denial Participation. At the local level, Law Number 2 of January 4<sup>th</sup>, 2018, establishes the prohibition of Government Agencies, Public Corporations or Municipal Governments to award Bids or Contracts to persons or entities interested in offering services or goods, when there has been a conviction or a plead of guilt under state, federal or any other judicial jurisdiction of the United States of America or any other country, of crimes which constitute fraud, improper intervention or influence in Bid and Contract awards, forgery, bribery, improper use or appropriation of public funds, and others. A list of these crimes appears in Article 9.2(e) of Law Number 2 of January 4<sup>th</sup>, 2018 cited previously. The person or entity will submit a statement before a Public Notary where he, she or it will inform if there has been a conviction or plead of guilt or he, she or it is subject to investigation in any legislative, judicial or administrative process in Puerto Rico, the United States of America or any other country.
- hh. **Responsive Bid** - A Bid that conforms exactly to the requirements in the Invitation for Bids (IFB).
- ii. **Secretary** – Secretary of the Puerto Rico Department of Housing.
- jj. **Small Purchase Method** - Competitive method for procurement of goods, work and/or services in an aggregate amount equal or less than the Simplified Acquisition Threshold established by federal statute and regulation for Small Purchase, two hundred fifty thousand dollars (\$250,000.00). (Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 and will be periodically adjusted for inflation at 2 CFR Sections 200.88 and 200.320(b)) The most common methods of making Small Purchases are by Petty Cash, Purchase Orders, Blanket Purchase Orders, and Contracts. Please see the Financial Management Guide for factors considered in evaluation of proposals for audit services.
- kk. **Sealed Bidding Method** - A method of procurement used for Contracts that exceed the Small Purchase Threshold and 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 Responsive Contractor.

- ll. **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.
- mm. **Subgrantee** – a Non-Federal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.
- nn. **Subrecipient** – a Non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.
- oo. **Task Order** - Written statement for performance of work or services issued by PRDOH under an Indefinite Delivery-Indefinite Quantity Contract or a Requirement Contract.
- pp. **User Area** – Administrative unit, bureau, department or area within PRDOH Disaster Recovery Division that request services under the CDBG-DR allocation.

## Section 2 Interpretation

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

## ARTICLE III PROCUREMENT ADMINISTRATION

### Section 1 Contracting Officer

Pursuant to the authority granted to the PRDOH by Law Number 97, approved in June 10th, 1972, known as the "Department's Organic Act", and in accordance with (i) Law Number 38, approved in June 30, 2017, as amended, known as the "Puerto Rico Uniform Administrative Procedure Act (PRUAPA)", the Secretary is the Contracting Officer for the purposes of administering the PRDOH procurement system. All procurement processes shall be the responsibility of the Secretary or his designee in accordance to PRDOH's Organic Act. Procurement processes shall be the responsibility of the Secretary, Executive Director and officials authorized to administrate the procurement system and processes, including:

- a. procurement of goods;
- b. procurement of professional and technical services;
- c. Issue, with the approval of the Secretary of PRDOH, all administrative bulletins necessary to clarify and implement this Manual;
- d. Execute, with the approval of the Secretary of PRDOH, all disciplinary actions necessary to correct any violation of the ethical standards set forth in this Manual and applicable federal and state laws, rules and regulations;
- e. Ensure that all procurement processes of PRDOH are consistent with the CDBG-DR governing regulations and requirements and the procurement planning to achieve the most efficient and cost- effective procurement;



- f. Ensure that every procurement process of the PRDOH will have a complete Procurement File with all the information required by this Manual and applicable federal and state laws, rules and regulations;
- g. Ensure that the PRDOH meets the procurement and program requirements set forth in Part 200 of Title 2 of the Code of Federal Regulations in each procurement process or action funded totally or partially with federal funds; specifically, in accordance with 2 CFR 200.318(b);
- h. Ensure that the PRDOH complies with the applicable HUD review requirements in all procurement actions governed by 2 CFR 200.324:
  - i. The non-Federal entity PRDOH must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally would take place prior to the time the specification is incorporated into a solicitation document. However, the Federal awarding agency or pass-through entity may still review the specifications after the solicitation has been developed;
  - ii. The non-Federal entity must make available to the Federal awarding agency or pass-through entity, upon request, pre- procurement review, procurement documents or Independent Cost Estimates.
- i. Ensure that recommendations to the Bid Board for the award of Contracts in excess of two hundred fifty thousand dollars (\$250,000.00) are made in favor of the Responsible Bidder with the Responsive Bid that offers the lowest price, or to the Responsible Proposer whose Proposal is the most advantageous to the PRDOH in terms of price and other evaluation factors considered;
- j. Ensure that all Contracts, Purchase Orders, Task Orders, Delivery Orders, modifications and/or Change Orders are issued in writing and are supported by all required documentation.

## Section 2 Procurement Department Personnel Roles and Responsibilities

- 1. Procurement Director – The Procurement Director is a leadership position within PRDOH responsible for reviewing proposals, evaluating compliance with requirements and regulations, maintaining communication to ensure timely execution, and analyzing contract documents. Manages Contract/Procurement team and provides guidance on contracts administration, concepts and regulations. Examples of tasks and duties of the Procurement Director include:
  - i. Develop and implement procurement policies and procedures.
  - ii. Complete HUD required contracts reporting.
  - iii. Plan, coordinate, direct, and supervise all activities that are carried out in disaster recovery projects procurement and contracting



- iv. Stay informed of all changes in laws and federal and State regulations affecting the activities of acquisition and procurement of goods and services, or monitoring of contracts regarding disaster recovery grant funds.
    - v. Prepare, revise, establish and implement procedures and guidelines.
    - vi. Develop Procurement Plan for all disaster recovery projects.
  2. Procurement Deputy Director – The Procurement Deputy Director is a leadership position within PRDOH responsible for reviewing proposals, evaluating compliance with requirements and regulations, maintaining communication to ensure timely execution, and analyzing contract documents. Manages Contract/Procurement team and provides guidance on contracts administration, concepts and regulations. Examples of tasks and duties of the Procurement Deputy Director include:
    - i. Verify implementation of procurement policies and procedures.
    - ii. Assist with completion of HUD required contracts reporting.
    - iii. Plans, coordinates, directs, and supervises activities that are carried out in disaster recovery projects procurement and contracting
    - iv. Stays informed of all changes in laws and federal and State regulations affecting the activities of acquisition and procurement of goods and services, or monitoring of contracts regarding disaster recovery grant funds.
    - v. Assist with preparations, revision and implementation of procedures and guidelines.
    - vi. Develop Procurement Plan for all disaster recovery projects.
  3. Procurement Specialist – The Procurement Specialist is a term position responsible for assisting the Procurement Director with reviewing proposals, evaluating compliance with requirements and regulations, and analyzing contract documents. Examples of tasks and duties of the Procurement Specialist include:
    - i. Draft necessary partner agreements.
    - ii. Maintain a contract registry and review contractor agreements and practices to ensure compliance will all federal rules and requirements.
    - iii. Make contract awards and prepare contracts with contractors and agreements with subrecipients.
    - iv. Coordinates and develops activities related to contracts for the services of the administration procedure.
    - v. Verify information and analyses proposals of contractors, suppliers and providers of services for qualification.
    - vi. Prepare processes documents related to the contracting of services.
    - vii. Coordinate with suppliers and service providers the delivery of required documentation for the analysis of the proposals and the formalization and contracting services.



### Section 3 Procurement Process

The PRDOH will review periodically its registers of previous acquisitions and even future acquisitions, to determine courses of action in the procurement processes that will result in an economic and efficient exercise; maximize competence and competitive prices in the Contracts and minimize the costs of acquisitions. The PRDOH will also reduce administrative costs, ensure that the goods and services are obtained without the necessity of re-acquisitions and that all materials and equipment purchased comply with Federal and State laws and regulations. Particular attention should be given to the requirements of filling, security, and management of the procurement process, including dispute solving.

#### **ARTICLE IV DELEGATION OF PROCUREMENT AUTHORITY**

The Secretary is the Contracting Officer of the PRDOH. The Procurement processes shall always be the responsibility of the Secretary and the officials who are ordinarily authorized to administrate the procurement system and processes.

#### **ARTICLE V PROCUREMENT OF RECOVERED MATERIALS**

Consistent with 2 CFR 200.322, when appropriate, specifications shall include requirements for the use of recovered materials and products. The specifications shall require, at a minimum that all responses to a solicitation include a product content statement that describes the percentage of the content of the item that is reclaimed material. The department shall revise specifications developed by agencies if the specifications restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will impede the intended use of the product. Specifications shall support the following procurements: Products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires.

#### **ARTICLE VI PROCUREMENT MANUAL FORMS**

##### Section 1 General Rule

The Procurement Manual Forms ("PMF's") shall be utilized by PRDOH, and all its subgrantees (or subrecipients), for every procurement action.

##### Section 2 Specific Forms

The PMF's will be utilized in accordance with this Manual and the written instructions on each individual form. PMF's are attached to the Manual. Each Procurement File must contain the appropriate PMF's. These Forms are part of the PRDOH's Procurement Procedures and may be modified at the discretion of PRDOH.



## ARTICLE VII MINORITY, SMALL AND SECTION 3 BUSINESS PARTICIPATION

### Section 1 General

The PRDOH shall take appropriate affirmative action to ensure 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 opportunity to participate in all procurement processes financed in whole or in part with PRDOH CDBG-DR federal funds. The PRDOH shall, consistent with applicable federal and state laws and regulations, establish goals for the participation of the above referenced businesses in the PRDOH appropriate CDBG-DR Program policies and procedures.

### Section 2 Affirmative Action Steps

Affirmative action steps for the small business participation policy stated on Section 1 of this Article shall include:

- a. Placing qualified 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 (MBE/WBE) are solicited whenever they are prospective sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises (MBE/WBE);
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce, and in addition;
- f. Contacting business assistance agencies, minority contractors (MBE/WBE) associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 assistance.
- g. Consistent with PRDOH's Section 3 Plan and Procedures, publication of contracting opportunities will be done by posting notices in the common areas or other prominent areas of the housing development or developments owned and managed by the PRDOH which provide general information about the work to be contracted and where to obtain additional information,
- h. Providing written notice to all known Section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to the Bid Invitations (IFBs) or Request for Proposals (RFP's).
- i. Following up with Section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.



- j. Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.
- k. Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- l. 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 CFR Part 135 (Section 3 businesses);
- m. Requiring the prime Contractor, if Subcontractors are to be let, to take the affirmative steps listed in this section.

## **ARTICLE VIII METHODS OF PROCUREMENT**

### Section 1 Recognized Methods of Procurement

Six primary procurement methods shall be used by PRDOH or its subrecipients to procure materials, supplies, construction and services for CDBG-DR program activities, as referenced in Sections 3 – 8 below:

- i. Micro Purchases
- ii. Small Purchases,
- iii. Sealed Bidding,
- iv. Competitive Proposals, including Request for Proposals (RFP) and Qualifications Based Selection (QBS) or Request for Qualifications (RFQ),
- v. Noncompetitive Proposals (including Emergency Purchases),
- vi. GSA Schedule Purchases.

Procurements under the method identified in subparagraph (i) and (ii) above shall be awarded by means of Petty Cash Vouchers or Purchase Orders (Contracts), depending on the amount of the procurement, as hereinafter provided. Procurements under the methods identified in subparagraphs (iii), (iv), (v), and (vi) above shall be awarded by means of a Contract, unless otherwise provided in this Manual. When conditions are not appropriate for the use of Sealed Bids, the Method of Competitive Proposals must be used. This is the preferred method to obtain professional services which exceed the Small Purchase Threshold. For all procurement actions, the rationale for choosing the procurement method must be documented in the Procurement File.

### Section 2 General Rules



- a. To commence a procurement process, the Director of Disaster Recovery will request a certification of availability of funds from the Finance Department. The Finance Department will review said request and, if funds are allocated in the PRDOH budget for that particular procurement process, the Finance Department will certify the availability of funds and code the procurement process. Whenever applicable, the Finance Department shall certify or consult with the Environmental and Permit Compliance Division to ensure that an environmental evaluation has been completed for a proposed project/activity that could have an environmental impact.
- 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. Examples of such restrictions include, but are not limited to, the following:
  1. Imposing unreasonable requirements (i.e., requirements that are not relevant to the scope of the solicitation) on proponents and bidders, which may reduce their ability to qualify to do business with the PRDOH;
  2. Requiring unnecessary experience or excessive bonding;
  3. Allowing noncompetitive pricing practices (collusion) among proponents or bidders, or among affiliated proponents or bidders;
  4. Allowing individual and/or organizational conflicts of interest;
  5. Specifying only a "brand name" product, rather than allowing an "equivalent" product to be offered by describing the expected performance or other relevant procurement requirements; or
  6. Tolerating any capricious or arbitrary action by the PRDOH personnel in any procurement process.
- c. The Contracting Officer of the PRDOH must avoid approving 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 threshold (\$250,000.00) or the Micro Purchase threshold (\$10,000.00).
- d. The Contracting Officer must comply with the minimum bonding requirements in Construction Contracts which amount exceed the Federal Small Purchase Threshold of \$250,000.00, 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 of the bid price. The "bid guarantee" 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 his bid, execute such contractual documents as may be required within the time specified.
  2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material





in the execution of the work provided for in the contract. The bonds may vary according to the type of Contracts and are not required in the Small Purchase Method.

- e. PRDOH reserves its right to negotiate with more than one Proponent at the same time and/or to award a given procurement process to more than one Proponent. These reserves must be conspicuously stated in the solicitation materials for each procurement process.
- f. In each case where the total sum of the Contract, Task Order, Delivery Order, modification or Change Order, to be awarded exceeds the Small Purchase Threshold of two hundred fifty thousand dollars (\$250,000.00), the Procurement Area must obtain all required approval authorizing the procurement process before continuing with the same.
- g. The period for solicitation relation to paid advertisement must be sufficient to achieve effective competition. The advertisement for the solicitation must be published at least once each week for two consecutive weeks.
- h. According to Law Number 2 of January 4, 2018, known as "Prohibition to Award Contract or Bid to Persons Convicted of Crimes Constituting Fraud, Illegal Appropriation or Misuse of Public Funds", no Executive Director of a Government agency or instrumentality, public corporation, or Municipality, shall award any Contract or Bid of acquisition of goods or services to a person or entity that has been convicted or has plead guilty in a state or federal court or any other jurisdiction of the United States of America, or another country if the elements which constitute the crime are the same, of certain crimes constituting fraud, illegal appropriation or misuse of public funds, for a term of ten (10) years in convictions of felony crimes and five (5) years in convictions of misdemeanor crimes. The conviction of such crimes, listed in Section 9.2(e) of the Law, will imply the automatic rescission of current Contracts with Government agencies or instrumentalities, public corporations or Municipalities. Consequently, Contracts must include a penalty clause for the refund of public funds by the person convicted or guilty.

### Section 3 Micro Purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

### Section 4 Small Purchases Method

**General:** Any procurement not exceeding the Small Purchase Threshold of two hundred fifty thousand dollars (\$250,000.00) shall follow the requirements set forth at 2 CFR 200.320(a). Also, the Contracting Officer may not break down requirements aggregating



more than the Small Purchase Threshold (or the Micro Purchase threshold) into multiple purchases that are less than the applicable threshold (bid splitting) merely to permit use of the Small Purchase procedures or to avoid any requirements that apply to purchases that exceed those thresholds. However, larger requirements may be broken into smaller ones. When this occurs, the Contracting Officer or the official of the agency who has been delegated this function, should document in the Procurement File the reasons for breaking down larger requirements into smaller ones; for example: to offer small and minority businesses a better opportunity to participate in the PRDOH's procurement processes.

**Purchases over \$10,000.00:** For Small Purchases in excess of ten thousand dollars (\$10,000.00), but not exceeding two hundred fifty thousand dollars (\$250,000.00), price or rate quotations must be obtained from an adequate number of qualified sources. Therefore, it is established that not less than three Vendors, Suppliers or Offers' shall be solicited to submit a price quotation or offer depending on the complexity of the procurement.

Federal and local laws and regulations require that purchase orders and Contracts for Small Purchases other than construction contain specific clauses, denominated "Mandatory Clauses". According to these clauses HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other changes. (Appendix II to Part 200 of 2 CFR Ch. II; Table 5.1, as guideline) (See Article XII, Section 2 of this Manual, about CONTRACT TYPES AND CLAUSES).

In Small Purchases procurement processes, the Contracting Officer or designated official of the agency may and is encouraged to negotiate price and other terms of purchase, when appropriate, except in relation to the "Mandatory Clauses" of the Contract. The Small Purchase Division of the Procurement Area will implement an administrative system to ensure that the items required by Contract are received in accordance with Contract terms.

#### Section 5 Sealed Bidding Method

**General:** Sealed Bidding shall be used when the cost estimate is more than the \$250,000.00, PRDOH. Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids (IFB), is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions below, apply.

1. A complete, adequate, and realistic Statement of Work (SOW), specification or purchase description is available;
2. Two or more Bidders are willing and able to compete requirements effectively for the business solicited;
3. The procurement is appropriate for a firm-fixed price Contract and;
4. The selection of the successful Responsible Bidder can be made principally on the lowest price.



An IFB must be solicited from an adequate number of Bidders or Suppliers, providing sufficient response time prior to the date set for the opening of the Bids. The IFB will include specifications and attachments; also, an adequate description of the services solicited and the terms of the Contract to be awarded. All Bids will be opened at the time and place indicated in the IFB. This act will be public.

- a. **Solicitation and Receipt of Bids:** When an IFB is issued it will include specifications, all contractual terms and conditions applicable to the procurement, and a statement that 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. Also, must include the date the Contracting Officer or delegated officials (Procurement Area) will hold a Pre-bid Conference. The Pre-bid Conference is held with prospective Contractors to discuss the project requirements and details of the IFB and is normally held for large or complex procurements. 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.

At the Pre-bid Conference, the Contracting Officer or delegated officials will state that nothing said at the 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 Area also must be sufficient to achieve effective competition. All Bids received will be date and time-stamped and stored unopened in a secure place until the public Bid Opening. A Bidder may withdraw the Bid at any time prior to the Bid Opening.

- i. **Specifications:** All the specifications must be drafted to promote an economy to the PRDOH for the intended purposes and to promote competition, to benefit the needs of the PRDOH. The specifications must be reviewed before issuing any IFB, to ensure that it is not unduly restrictive or representing duplicity. Specifications are preferred over function or compliance. Detailed specifications should be avoided over products. For equipment, an analysis of leasing should be performed versus buying, to determine the most economic method of acquisition, in accordance with 2 CFR 200.318(d).

For construction or facility improvements, Contracts or Subcontracts exceeding the \$250,000.00 threshold, PRDOH shall require from the Contractor the following policy for bonding:

- a. A Bid guarantee from each Bidder equivalent to five percent (5%) of the Contract price, from an acceptable surety company. An acceptable surety company is one which is



- authorized to do business in the Government of Puerto Rico and authorized by HUD and the PRDOH. The surety company must be listed on the most recently published U.S. Treasury Circular 570, often referred to as T-List. The Bid guarantee must consist of a Bid Bond, certified check, or other negotiable instrument accompanying the Bid to assure that the Bidder will execute the contractual documents as may be required within the time specified;
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- ii. **Limitations:** The following specifications in solicitations must be avoided as these could limit competition:
- a. Geographical restrictions which are not required, nor promoted by the federal law, except in cases of Architects and Engineers (A/E) Contracts, which may include geographical locations if such a selection factors allows for adequate competition.
  - b. Brand products specifications (unless the specifications list the minimum essential standards that the article must comply for the use proposed). Nothing in this acquisitions policy will have the effect of excluding ("preempt") the application of the laws of Puerto Rico related to professional licenses.
  - c. Requiring unnecessary experience and excessive bonding
  - d. Placing unreasonable requirements on firms for them to qualify to do business
- b. **Bid Opening and Award:** Sealed Bidding is a public process; therefore, Bids shall be publicly opened and in the presence of at least one witness. To ensure fairness in the award process, any interested parties are permitted to attend the Bid Opening. All Bids received at the date and time specified to be received must be opened and recorded in a minute at the Bid Opening and this shall be part of the Procurement File, and then made available for public inspection. If equal low Bids are received, the Bid participation in the award process shall be decided by lottery, the lottery shall be conducted by the Procurement Area. If only one Bid is received, and it is a Responsive Bid from a Responsible Bidder, then, prior to any award; (i) a cost or price analysis must be conducted by the Procurement Area verifying the reasonableness of the price, and (ii) the PRDOH must secure HUD's written approval for competitive contract publications that receive a single solicitation.



- c. **Mistakes in Bids:** Correction or withdrawal of Bids may be permitted, where appropriate, before Bid Opening by written notice received in the office designated in the IFB prior to the time set for Bid Opening. After Bid Opening, corrections in Bid may be permitted only if the Bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the Bid price intended. A low Bidder alleging a nonjudgmental mistake may be permitted to withdraw its Bid if the mistake is clear on the face of the Bid document, but the intended Bid is unclear and the Bidder submits convincing evidence that a mistake was made. All decisions to allow correction or 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 prices or other provisions of Bids prejudicial to the interest of the PRDOH or fair competition shall not be permitted.

## Section 6 Competitive Proposals Method

**General:** The Competitive Proposal Method is typically used to contract for professional consulting, architectural or engineering services. This method of procurement allows for the consideration of technical factors other than price; discussion with Offerors or Proponents concerning Offers submitted; negotiation of other Contract terms and conditions; revision of Proposals before the final Contractor selection; and the withdrawal of an Offer at any time up until the point of award. Award is normally made based on the Proposal that represents the best level overall value to the PRDOH, 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.

- 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.
- 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 Offers', identity of the Offers', and the contents of their Proposals until after award. The PRDOH may assign price a specific weight in the evaluation criteria or the PRDOH may consider price in conjunction with technical factors. In either case, the method for evaluating price shall be established in the RFP.
- c. **Bonding Requirements** The PRDOH shall require bid or performance bonds, among others, for Competitive Proposals for construction or facility improvements, when deemed appropriate; however, non- construction contracts should generally not require bid bonds. For construction contracts



exceeding the Small Purchase Threshold of \$250,000.00, the successful bidder shall furnish the following to PRDOH:

- i. A Bid guarantee from each Bidder equivalent to five percent (5%) of the Contract price, from an acceptable surety company. An acceptable surety company is one which is authorized to do business in the Government of Puerto Rico and authorized by HUD and the PRDOH. The surety company must be listed on the most recently published U.S. Treasury Circular 570, often referred to as T-List. The Bid guarantee must consist of a Bid Bond, certified check, or other negotiable instrument accompanying the Bid to assure that the Bidder will execute the contractual documents as may be required within the time specified;
  - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- d. **Evaluation** The proposals will be evaluated by an Evaluation Committee whose members, including the Chair or President who will lead the process, shall be designated by the Secretary. The Evaluation Committee must base the evaluation of the Proposals only on the criteria stated in the RFP. Typical evaluation criteria include: demonstrated understanding of the requirement; appropriateness of the technical approach in the proposal; quality of the work plan; technical capabilities; management plan; and demonstrated experience in performing similar work. As part of the procurement procedures, for every formal procurement procedure or action requiring an Evaluation Committee appointment, the Procurement Area will seek to:
- i. Ensure Evaluation Committee composition is made up of three or more members, having an odd number of members (3, 5 or 7).
  - ii. Identify Committee member requirements.
  - iii. Provide the necessary guidance to designated Evaluation Committees members to support a standardized and consistent evaluation process.
- e. **Negotiations** After the Evaluation Committee has evaluated the Proposals unless negotiations are unnecessary, the Contracting Officer may negotiate with Offers' who submitted Proposals that he or she (Contracting Officer) has determined to have a reasonable chance of being selected for award. (Offers' in "Competitive Range") This determination is based on the relative score of the Proposals as these have been evaluated and rated, in accordance with the technical and price factors specified in the RFP. These Offerors shall be treated fairly and equally with respect to any opportunity for



negotiation and revision of their Proposals. The purpose of negotiations shall be to seek clarification and advise Offerors of the deficiencies in both the technical and price aspects of their proposals to assure full understanding of and conformance to the solicitation requirements. No Offeror shall be provided information about any other Offeror's proposal, and no Offeror shall be assisted in bringing its proposal up to the level of any other Proposal. A common deadline shall be established for receipt of Proposal revisions based on negotiations. The scope and extent of discussions are a matter of the Contracting Officer's judgment. The Contracting Officer may inform an Offeror that its price is considered by the PRDOH to be too high, or too low, and reveal the results of the analysis supporting that conclusion. Offerors shall not be directed to reduce their proposed prices to a specific amount to be considered for award. "Auctioning" (revealing one Offeror's price to get another Offeror or to lower their price) is prohibited.

- f. **Award** After evaluation of the revised Proposals, if any, the Contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the PRDOH provided that the price is within the maximum total project budgeted amount established for the specific property or activity.
- g. **Architect/Engineer A/E Services** A/E professional services in excess of the Small Purchase limitation (\$250,000.00) shall be obtained by Competitive Proposal Method or Qualifications Based Selection Method. Therefore, PRDOH may use a "full-service" approach when it solicits offers using Competitive Proposal procedures or Qualification Based Selection Method (QBS) for assistance in preparing modernization plans, with options for the follow-on design and construction phases for a specific Contract. Under Qualifications Based Selection procedures, competitors' qualifications and experience are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications Based Selection procedures can be used for A/E services or Developer's Related Contracts, or when or when specific skills and experience are needed. PRDOH may procure A/E services for more than one specific project and may solicit for an Indefinite-quantity Contract of A/E services; for example, design of various administrative or maintenance buildings, where separate orders would be placed for each building as the need occurs. Just as in QBS procedures where A/E services assistance for modernization plans may be solicited first and eventually, the option for solicitation of the services for the follow-on design and construction, the PRDOH should be careful with the terms of the Contract avoiding unfair competitive advantage in favor of one specific A/E firm or lack of objectivity in the selection process.



**General:** Procurement by Noncompetitive Proposals may be used only when the award of a contract is not feasible using Small Purchase procedures, Sealed Bids, Cooperative Purchasing/ Intergovernmental Agreement or Competitive Proposals, and if one of the following applies ("2 CFR 200.320"):

1. The item is available only from a single source, based on a good faith review of available sources.
2. A public exigency or emergency exists that will not permit a delay resulting from competitive solicitation. In such cases, there must be an immediate and serious need for supplies, services, or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary simply to meet the emergency. Emergency situations may be classified as follows:
  - a. **Critical Emergency** – A "Critical Emergency Procurement" is an emergency that requires the procurement of goods, work and/or services to be delivered and/or contract work must begin within twelve (12) hours and will be addressed and evaluated by the Procurement Director and approved in writing by the Secretary, in the most expedite manner feasible.
  - b. **Urgent Emergency** – An "Urgent Emergency" is an emergency which requires the procurement of goods, services and/or works to be delivered and/or contract work begun within seventy-two (72) hours and will be attended to and evaluated by the Procurement Director and will be approved in writing by the Secretary, in the most expedite manner feasible. Both Critical Emergency and Urgent Procurements will be conducted by the Procurement Area staff based on a priority basis. Competitive procurement procedures must be followed once the emergency has been addressed.
3. HUD authorizes the use of Noncompetitive Proposals Method. However, each noncompetitive procurement process expected to exceed the two hundred fifty thousand dollars (\$250,000.00) threshold will require HUD's written approval in response to written request from PRDOH; or
4. After solicitation of several sources, competition is determined inadequate. PRDOH or the procuring entity shall maintain detailed records substantiating the lack of competition.

**Justification:** Each procurement that is based on Noncompetitive Proposals or Emergency Purchase shall be supported by a written justification. The justification shall be approved in writing by the responsible 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);
3. The specific exception of any of the four indicated in "2 CFR 200.320(f)" and in Section 7 of this Article (Article VIII) above, which applies;





4. Statement as to the unique circumstances that require award by Noncompetitive Proposals;
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. Statement as to efforts that will be taken in the future to promote competition for the requirement;
7. Signature by the Contracting Officer; and
8. Price Reasonableness - The reasonableness of the price for all procurements based on Noncompetitive Proposals shall be determined by performing a cost or price analysis.

#### Section 8 General Services Administration (GSA) Purchases

**General:** Pursuant to 48 USC 1469(e), "Insular Government Purchases", the Government of Puerto Rico has the statutory authority to make purchases through the General Services Administration (GSA). Accordingly, the PRDOH may establish contracts based on GSA schedules pricing when it has been determined in writing by the Procurement Director that certain conditions deeming a contract based on GSA schedule pricing is in the substantial best interest of the PRDOH. This written determination must be made a part of the procurement file.

An award shall be made on the basis of the Proposal that represents the best value (not lowest cost) to the DOH, considering price and other factors, such as technical expertise, past experience, quality of proposed staffing plan, etc. as set forth in the Proposal.

- a. **Form of Solicitation** Competitive Quotations shall be solicited through the issuance of a Request for Quotations (RFQ). The RFQ 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 so as to prevent disclosure of the number of Offers', identity of the Offers', and the contents of their Proposals until after award. The DOH may assign price a specific weight in the evaluation criteria or the DOH may consider price in conjunction with technical factors.

As required by FAR 8.405-2, ordering activities must provide an RFQ, including the evaluation criteria or the basis upon which the selection will be made, to GSA Schedule contractors that offer supplies or services that will meet the agency's needs. When an ordering activity issues an RFQ, the request should include the Statement of Work (SOW), and it shall ask GSA Schedule contractors to submit a price quote to provide the services as outlined in the SOW. The price shall be based on the prices in the Schedule contracts and shall consider the mix of labor categories and level of effort required to perform the services described in the SOW. A Firm Fixed Price (FFP) order shall be requested, unless the ordering activity makes a determination that it is not possible at the time of placing the order to estimate



accurately the extent or duration of the work or to anticipate cost with any reasonable degree of confidence.

- b. **Evaluation** The Proposals will be evaluated by an Evaluation Committee whose members, including the Chair or President who will lead the process, shall be designated by the Administrator. The Evaluation Committee must base the evaluation of the Proposals only on the criteria stated in the RFQ. Typical evaluation criteria include: demonstrated understanding of the requirement; appropriateness of the technical approach in the proposal; quality of the work plan; technical capabilities; management plan; and demonstrated experience in performing similar work.

As part of the procurement procedures, for every formal procurement procedure or action requiring an Evaluation Committee appointment, the Procurement Area will seek to:

Ensure Evaluation Committee composition is made of three or more members, having an odd number of members (3, 5 or 7). Identify Committee member requirements and expected results. Provide the necessary guidance to designated Evaluation Committees members in order to support a standardized and consistent evaluation process.

- c. **Negotiations** After the Evaluation Committee has evaluated the Proposals unless negotiations are unnecessary, the Contracting Officer may negotiate with Offers' who submitted Proposals that the Contracting Officer has determined to have a reasonable chance of being selected for award. This determination is based on the relative score of the Proposals as these have been evaluated and rated, in accordance with the technical and price factors specified in the RFQ. These Offers' shall be treated fairly and equally with respect to any opportunity for negotiation and revision of their Proposals. The purpose of negotiations shall be to seek clarification with regard to and advise Offers' of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No Offeror shall be provided information about any other Offer's proposal, and no Offeror shall be assisted in bringing its proposal up to the level of any other Proposal. A common deadline shall be established for receipt of Proposal revisions based on negotiations. The scope and extent of discussions are a matter of the Contracting Officer's judgment. The Contracting Officer may inform an Offer or that its price is considered by the DOH to be too high, or too low, and reveal the results of the analysis supporting that conclusion. Offers' 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 Proposals, if any, the Contract shall be awarded to the responsible firm whose technical approach to the project, qualifications, price and/or any other factors considered, are most advantageous to the DOH provided that the price is within the maximum total project budgeted amount established for the specific property or activity.

## ARTICLE IX COST OR PRICE ANALYSIS



## Section 1 General

A cost or price analysis shall be conducted for each procurement process or action in excess of the Small Purchase Threshold, including GSA contract purchases, contract modifications and change orders. PRDOH shall require assurance that, before entering into a contract, a contract modification or a change order, the cost and/or price is reasonable. The method and degree of cost or price analysis shall depend on particular facts of each procurement process.

To document the cost and/or price analysis, for all procurement actions, the procuring entity (either PRDOH or its subgrantees) shall submit to the Procurement Area the following:

1. An itemized breakdown of projected costs and profits; and
2. Commercial pricing and sales information, sufficient to enable the PRDOH to verify the reasonableness of the proposed costs and prices, such as, among others, a catalog, or other evidence of the market price of a commercial product sold in substantial quantities to the public, or documentation showing that the offered price is set by law or regulation.

## Section 2 Cost Analysis

- a. The Disaster Recovery Division, the Finance Division, the Environmental Division, or a consultant of PRDOH or its subgrantee (as applicable in the procurement) shall obtain an independent cost estimate (Independent Cost Estimate; ICE) for all procurement actions in excess of the Small Purchase Threshold or the amount of \$250,000.00. The Disaster Recovery Director will submit a procurement request to the PRDOH, if a cost estimate is required as attachment. Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.
- b. Whenever a cost analysis is required, it shall be performed by the Procurement Area staff, and shall focus on the individual cost elements of the particular request. (2 CFR 200.323) The PRDOH or its subgrantees shall have the right to audit the Offeror's or Bidder's books and records related to such costs, and profits shall be analyzed separately. Costs shall be allowed only to the extent that they are consistent with the applicable federal cost principles.
- c. For the preparation of a cost analysis, the Procurement Area must answer the following questions:
  1. State the total costs of the procurement process, modification or termination, including a copy of the cost breakdown submitted by the Offer or, Bidder, or Contractor, as applicable;



2. What was the cost estimate for the procurement process prior the solicitation or sole source action? If this is an Emergency Contract, did the Procurement Director or Area conduct a cost analysis? If so, attach a copy.
3. If this procurement process is a sole source or an Emergency Contract, either before or after the award, based on the cost estimate prepared by the User Area, the Procurement Area must determine the difference between the current and the proposed cost and how much it would have cost if a Competitive Procurement Method was used. If the proposed or actual cost exceeds the estimated cost by ten per cent (10%), the Director of the User Area must explain the variance in writing.
4. Is the cost estimate: (i) established by law, rules or regulations, (ii) based on previous contracts, (iii) based on current catalogue/price lists, (iv) based on the Independent Cost Estimate prepared by the User Area or on its behalf? Attach copy, if applicable.

### Section 3 Price Analysis

- a. A price analysis is the review and evaluation of the price proposed by a Vendor, Offer or, Bidder, or Contractor, as applicable, to determine its reasonableness, without evaluating separate cost elements, i.e., without doing a cost analysis. In the case of Small Purchases and in most Sealed Bidding processes, except as otherwise hereinabove provided, the PRDOH shall perform a comparison between the prices received and the Independent Cost Estimate (ICE), to ensure that the selected price is reasonable.
- b. Price analysis shall be documented by using one or more of the following:
  1. Compare proposed prices received in response to the solicitation.
  2. Compare proposed prices with current prices on Contracts awarded during the last two (2) fiscal years and other current proposed prices for the same goods, work or services equal or similar.
  3. Apply simple yardsticks measures (such as dollars per pound, per square foot, or other units) to highlight significant inconsistencies that warrant additional pricing inquiries.
  4. Compare competitive pricing lists, published market prices of commodities and similar indexes, and inquire about discount or rebate arrangements.
  5. Compare proposed prices with Independent Cost Estimate.

## ARTICLE X CANCELLATION OF SOLICITATIONS

### Section 1 Prior to Deadline to Receive Offers

A Small Purchase, an IFB, RFP, RFQ, or any other solicitation may be cancelled before the deadline in which the offers must be submitted or received in the PRDOH if:

- a. The PRDOH no longer requires the goods, services or construction works solicited; or
- b. Funding is no longer available for the PRDOH procurements goods or services;



- c. Amendments proposed to the initial solicitation are material and the PRDOH 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 PRDOH.

#### Section 2 After the Deadline for Submitting Offers

All solicitation may be cancelled after the advertised deadline for submission of Offers and all Offers received may be returned if:

- a. The PRDOH no longer required 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 PRDOH; or
- d. The projected cost exceeds available funds and it is not appropriate to adjust the solicited quantities to come within available funds; or
- e. There is reason to believe that Offers are not bona fide, or may not have not been prepared separately through open competition, or may be collusive; or
- f. For just cause, when it is in the best interest of the PRDOH.

#### Section 3 Cancellation Notice

The reason for cancellation of the solicitation shall be set forth in writing by the Secretary and will be included in the Procurement File and notified to all Suppliers, Offers' and Bidders who participated in the process. The Cancellation Notice will inform the Supplier, Proponent or Bidder that an opportunity will be given to compete in any other process thereto or any purchase of similar items.

#### Section 4 Unreasonable Prices

In the event of an IFB, if all otherwise Responsive Bids are at unreasonable prices, or only a Responsive Bid has been received and the price is unreasonable, the PRDOH should conduct an analysis to determine if there is a problem in the specifications or the Independent Cost Estimate as in a previous circumstance and may cancel the IFB and/or complete the procurement process using other Competitive Methods established in this Manual, if all the following occur:

- a. The Secretary issued a determination in writing to such effect, with his/her signature;
- b. All Bidders are informed of the PRDOH intent to negotiate; and
- c. Each Bidder has a reasonable opportunity to negotiate.

### ARTICLE XI OFFICIAL RECORDS

The PRDOH or its subgrantee shall keep a record (the "Procurement File") of each procurement process, which will be the official record of the PRDOH for said procurement



process and shall document in detail the significant history of the same, as required by 2 CFR 200.318 (j).

Each Procurement File shall include, without limitation, the following information and documents concerning each procurement process:

- a. A document explaining the rationale for the method of procurement used, an explanation of the rating factors and their weight, and for the selection of the Contract type;
- b. A document explaining on the rationale for the selection or rejection of the Contractor, including a bid summary sheet, individual score sheets, and evaluation committee notes. Where price is not the sole determining factor, the rating factors, the weight of the rating factors and a full detail of all considerations resulting in the selection must be included in the procurement file. All PMFs must be retained in the procurement file including but not limited to score sheets and documentation substantiating the role of the evaluation committee;
- c. The basis for the Contract price;
- d. All advertisements and their details, including the method and timing of placement and their compliance with MBE/WBE/Section 3 requirements, related to actions taken by the PRDOH and/or any procedures;
- e. All determinations, interlocutory or final, taken by the PRDOH, any Program subgrantee, the Procurement Director, the Procurement Staff, the Evaluation Committee, the Secretary, the Bid Board, and/or the Bid Revision Board;
- f. All motions, allegations, questions, comments, petitions or requirements filed with the PRDOH or the Department by any person or entity and any response by PRDOH to any of the same;
- g. All documents or information requested, received or considered by the PRDOH, its agents and/or the Department; and,
- h. All memoranda drafted by any PRDOH or Department Official.

The Procurement File shall constitute the exclusive basis for actions by the PRDOH 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. 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 the PRDOH for a period of three (3) years after the date the PRDOH CDBG-DR Program is closed (2 CFR 200.333), or for a longer term as may be provided in any State laws, rules and regulations concerning access to government documents.

## **ARTICLE XII CONTRACT TYPES AND CLAUSES**



## Section 1 Contract Types

In every procurement process, the PRDOH 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. Time and Materials Contracts are only used after a determination that no other contract is suitable and if the contract includes a ceiling price, that the Contractor exceeds it at its own risk, in accordance with 2 CFR 200.318(j)(1) and (2).

Contracts using PRDOH "Cost-Plus Percentage of Cost" or "Percentage of Construction" cost contracts are not allowed. However, other types of Contracts may be used. The HUD Procurement Handbook can be used as a guide in this matter.

Among all types of Contracts, the most used are the following:

**a. Fixed-Price Contract (Firm Fixed-Price and Fixed-Price)**

This type of Contract is used when the Contractor is paid a firm fixed-price for all required work, regardless of the Contractor's actual cost of performance. It is appropriate for use when fair and reasonable prices can be established at time of award. Unless otherwise specified in the Contract, the ceiling price or target price is subject to adjustment only by operation of Contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances such as any benchmark requirements and penalties for late or nonperformance.

**b. Cost-Reimbursement Contracts**

In the case of Cost-reimbursement Contracts, each file should have, beside the above-mentioned, a written determination of why other types of Contracts are not appropriate. The Contract shall also include a ceiling price and point out that if the maximum price is exceeded; it will be at the Contractor's own risk without refund by the PRDOH. The Contracts may include options for additional quantities to the original price or extension of the compliance period, subject to the following conditions:

1. the option is specifically contained in the procurement method;
2. the option is a unilateral right of the PRDOH;
3. the Contract provides a limit on the additional quantities for the period of duration or complete duration of the Contract;
4. the options are evaluated as part of the initial evaluation (initial competition);
5. the Contract provides the period within which the options may be executed;
6. the options may be exercised only at the price specified in or reasonably determinable in the Contract and;
7. the option may be exercised only in cases where it is determined to be more beneficial to the PRDOH instead of making a new Contract.

**c. Indefinite-Delivery Contracts**



There are three types of Indefinite-delivery Contracts available to PRDOH: Definite-quantity Contracts, Requirements Contracts, and Indefinite-quantity Contracts. The appropriate type of Indefinite-delivery Contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of the Contract award.

1. Definite-quantity Contracts

These Contracts provide for delivery of a definite quantity of specific supplies or services for a fixed period (e.g. one year), with deliveries or performance to be scheduled at designated locations upon order. A Definite-quantity Contract may be used when the following factors can be determined in advance:

- a. A definite quantity of supplies or services will be required during the Contract period; and,
- b. The supplies or services are regularly available or will be available after a short lead time.

2. Indefinite-quantity Contracts

a. Origin of the Contract

A procurement process for the award of an Indefinite Quantity Contract (IQC) may be initiated by any User Area or the Procurement Area, whichever first identifies the need for such a Contract and its compliance with the applicable requirements. Depending on the aggregate amount of the proposed IQC, an IFB, RFP or Small Purchases Procurement Method will be used for the award of the same. The Procurement Director, along with the Director of the User Area, has the discretion to determine if any goods and/or services are to be purchased. Using an IQC, based on the procurement planning or the frequent use of the goods, work, and/or services not already covered by an IQC or Requirements Contract.

b. Procedures

The PRDOH shall use an IFB, RFP or a Small Purchases Procurement Method, as applicable, depending on the complexity of the project to be procured. The procurement must require that the PRDOH order and the Contractor furnish at least a stated minimum amount of supplies or services, and, if ordered by the PRDOH, the Contractor must furnish any additional quantities, not exceed a stated maximum amount. The Procurement Area, as applicable, shall establish a reasonable maximum and a minimum amount, which must be more than a nominal amount, but not more than the amount that the PRDOH is reasonably certain to order. The User Area requesting any goods, work and/or services covered by an





IQC, shall submit a Task Order or Delivery Order request, as applicable, to the Procurement Area, which will evaluate the request and the Procurement Director shall issue such Task Order or Delivery Order, as applicable, by signing it with reference to the IQC number. Copies of the Task Order or Delivery Order, as applicable, shall be sent to the Finance Department and the User Area requesting the same. The Procurement Area, the Finance Department, and each User Area will be responsible for monitoring the total dollar amount of IQC's to ensure that neither the Contractor nor the User Areas exceed the face amount of the same, unless and until the parties agree to modify the face amount of the IQC.

**d. Cooperative Purchasing/Intergovernmental Agreements for Procurement Activities**

The acquisitions based on this method will be acquired in the following form: The PRDOH and any subrecipients with prior PRDOH approval can be part in Cooperative or Intergovernmental Agreements, federal or local, for the procurement and use of common supplies and services. If services required by the PRDOH, are provided through this method and are part of a government's normal duties or responsibilities, it is permissible for the PRDOH to share the services and cost of staff under an agreement. The determination of using a Cooperative Agreement instead of any other direct procurement should be based in criteria of economy and efficiency. If this method is used, the Cooperative Agreement should establish who is the person authorized to buy or procure in representation of the contracting parts and should detail the inspection, acceptance, termination, payment and other relevant terms and conditions of the Agreement. The PRDOH can use local and federal excesses and properties in excess instead of purchasing new property or equipment, if possible, and if this results in the reduction of costs of the project. The procurement of goods and services by means of Cooperative Agreements must be done according to 2 CFR 200.318 (e). PRDOH will include in every Procurement File a document that will indicate the reason why a method of procurement and type of Contract is used.

**Section 2 Contract and Purchase Order Clauses**

All Contracts shall contain, among others, a clause identifying the type of Contract, and all required provisions set forth at 2 CFR 200.326, Appendix II, the mandatory clauses contained on the latest released HUD forms, as applicable to the Contract type. Each Purchase Order and Contract shall also include all other clauses required by federal and state laws, the 83 Fed. Reg. 28 (February 9, 2018), Executive Orders, rules and regulations, in accordance with 24 CFR 570.489(g), including, without limitation:



- a. All contracts, except for general management consulting services, will include performance requirements and liquidated damages.
- b. Termination for cause and convenience in all Contracts in excess of \$10,000.00 including manner by which the agency will be affected and the basis for settlement;
- c. Except as otherwise provided under 41 CFR Part 60, compliance with Equal Opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, signed and issued by the President of the United States, entitled "Equal Employment Opportunity", as amended and supplemented in U.S. Department of Labor regulations;
- d. Compliance with Davis-Bacon Act, as amended (40 U.S.C. 3141- 3148). When required by Federal program legislation, all prime Construction Contracts in excess of \$2,000.00 awarded by PRDOH must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144 and 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts covering Federally Financed and Assisted Construction"). A clause for compliance of the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations, must also be included;
- e. Compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701- 3708). Where applicable, all contracts awarded by PRDOH in excess of \$150,000.00, that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by U.S. Department of Labor regulations (29 CFR Part 5);
- f. Advertisement of HUD requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed during or under such Contract. (37 CFR Section 401.2 (a) and 37 CFR Part 401).
- g. Compliance with all applicable standards, orders, or requirements issued under the Clean Air Act, (42U.S.C.7401-7471q and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Compliance with mandatory standards and policies relating to energy efficiency which are contained in the Commonwealth of Puerto Rico's energy conservation plan, issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201);
- i. Compliance with orders and requirements relating to Debarment and Suspension (OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 at 3 CFR Part 1986 Comp., p. 189 and 12689 at 3 CFR Part 1989 Comp., p. 235; 2 CFR 180.220 establishes that a Contract award may not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management(SAM);
- j. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award of \$100,000.00 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of



- Congress in connection with obtaining any Federal grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- k. Retention of Contractor's records by PRDOH, HUD or Comptroller General of the United States, or any of their duly authorized representatives, until three (3) years after final payment under the Contract. If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved. Grant of access and right to the authorities named above to examine any documents, papers or records related to the Contract;
  - l. Advertisement of HUD requirements and regulations pertaining to right in data and patent rights (Ownership and proprietary interest) of PRDOH in relation to all information, materials, and documents discovered or produced by Contractor pursuant to the terms of the Contract.
  - m. Compliance of the Contractor 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, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.00; 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.
  - n. Award Protests and Contract Claims;
  - o. Value Engineering: Systemic and organized approach to analyze functions of systems, equipment, facilities, services and materials to ensure they achieve their essential functions at the lowest cost consistent to life cycle in execution, reliability, quality and safety, in accordance with 2 CFR 200.318(g);
  - p. Payment of Funds to Influence Certain Federal Transactions;
  - q. MBE/WBE and Section 3 requirements, and Drug-Free Workplace Act.

## **ARTICLE XIII CONTRACT MODIFICATIONS AND CHANGE ORDERS**

### Section 1 General

- a. As an exception, it may be necessary for the PRDOH to modify an awarded and executed Contract (includes a construction contract) or Purchase Order during its performance to address (i) unforeseeable or unpreventable changes required by the PRDOH or (ii) to revise the performance of the Contractor. Any such modification, amendment or change order constitutes a procurement action and, therefore, is subject to all applicable requirements set forth in this Manual.
- b. Prior to initiating any modification, PRDOH, or its subgrantee, must determine in writing that the proposed change is within the scope of the Contract or Purchase



Order. Unilateral modifications must be authorized according to the Changes Clause contained in the original Contract or Purchase Order. Bilateral modifications must be agreed upon by the PRDOH and the Contractor. Any modification outside the general scope of the Contract or Purchase Order must be considered for a new procurement process and will be conducted as a separate procurement process.

- c. In the case of unilateral modifications, the PRDOH will issue a Change Order describing the required modification and formalizing such unilateral modification with the Contractor's assertion as part of the Contract. Purchase Orders or Change Orders must be signed by the Secretary depending on the amount of the Contract and the Contract modification and if these Contracts are simply purchases of goods and services or are Contracts of Professional and Technical Services, subject to PRDOH internal norms. For example, in the case of a unilateral modification or Change Order of a construction contract which amount exceeds the Small Purchase Threshold, the Contractor must assert with the modification or submit a claim, both of which must be presented in writing to the Contracting Officer. According to the "Changes Clause" in HUD Form 5370 (Item 29(a)), the Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a Change Order, make changes in the work within the general scope of the Contract including changes:
1. In the specifications (including drawings and designs);
  2. In the method or manner of performance of the work;
  3. PHA-furnished facilities, equipment, materials, services, or site; or,
  4. Directing the acceleration in the performance of the work.

Also, according to Item 29(b) of the same Clause: "Any other written order, includes direction, instruction, interpretation, or determination from the Contracting Officer that causes a change shall be treated as a Change Order.

In the case of bilateral amendments, a written Contract modification will be prepared by the PRDOH, signed by the Contracting Officer (Secretary) and the Contractor, and shall describe the modification as set forth and the agreed upon cost, schedule, or other revisions to the Contract or original Purchase Order.

## Section 2 Contract Forms and Term

Bilateral modifications of a Contract, such as Purchase Orders for the purchase of goods and services shall be written in a specific form only used for this particular Contract by PRDOH Procurement Staff. Other Contracts may vary in form. All Contracts shall always be signed by both parties of the Contract. A Contract modification should include a detailed description of the change or modification and include costs and schedule, if applicable.

The term of a Contract shall not exceed a period of five (5) years, including options for renewal or extension. Contracts, with terms and extensions that exceed a total of five (5) years, are viewed as threatening to the principle of "full and open competition" of federal



regulations. PRDOH will seek the approval of HUD for Contracts in excess of a five (5) year term if it determines there is no other alternative.

### Section 3 Procedures

- a. Depending on whether it is a unilateral or bilateral modification, PRDOH or its subgrantee will prepare a written request for Change Order or Contractual modifications, in consultation with the Procurement Area, which will include the following:
  1. A detailed description of the proposed modification, including the new projected delivery date;
  2. A reference to the applicable specifications, drawings, or qualifications upon which the Contract or Purchase Order was originally developed and awarded, as applicable;
  3. Modified architectural drawings, as applicable;
  4. A detailed cost estimate, including a fixed price for, or the maximum price the modification;
  5. The Contractor's (and Subcontractors, as applicable) itemized breakdown of the proposed costs of the modification, if available;
  6. Certification of the Finance Department on the availability of funds;
  7. A written justification for the modification;
  8. A certification that the modification is within the original scope of the Contract or Purchase Order; and
  9. In the case of unilateral modifications, a certification that such modification shall be executed according to the Changes Clause contained in the original Contract or Purchase Order.
- b. Extraordinary modifications, that is, modifications where the User Area is requesting a change in the Contract or Purchase Order by seven per cent (7%) or more, or the time of completion by thirty (30) days or more, will require, in addition to the aforementioned documents, an Explanatory Memorial ("Memorial Explicativo") signed by the Grant Management Operations Director. The Explanatory Memorial ("Memorial Explicativo") shall: (i) describe the circumstances that make it necessary to modify, (ii) that such circumstances were not reasonably foreseeable at the time when the Contract or Purchase Order was solicited, awarded and executed; (iii) cite the federal, state, legal, administrative or contractual clause according to which the modification is being requested, and (iv) certify that the modification is in the best interests of the PRDOH.
- c. Depending on whether it is a unilateral or bilateral modification, a Change Order or written Contract modification request shall be prepared for each case once the corresponding document is complete, it shall be signed by the Grant Management Operations Director and forwarded to the Procurement Area, which will evaluate it and approve specifications, all contractual terms and conditions, and any Exhibits applicable to the modification. In the case of bilateral modifications, for example, a Change Order of a construction project, the Representatives of the PRDOH in the



Grant Management Operations Directors shall conduct any negotiation necessary to reach an agreement with the Contractor that best serves the PRDOH's mission of providing decent, safe and sanitary housing. The Grant Management Operations Director shall prepare a draft of the document formalizing the modification, which clearly describes the scope of the modification to the Contract or Purchase Order and shall identify the price and all other components of the same.

- d. The Procurement Director shall evaluate the above documentation and shall sign his/her approval on said draft, and forward the same to the Secretary, with his/her recommendation, including the reasons therefore.
- e. The Secretary, upon the written recommendation of the Procurement Director, shall approve the modification. Upon the Secretary of PRDOH approval: (i) in the case of unilateral modifications, a copy of the Change Order shall be delivered to the Contractor, who upon its receipt, must start working on the requested change; or (ii) in the case of bilateral modifications, the Contractor shall receive an advertisement stating the date, time and place for the execution of the written Contract modification mutually agreed upon by and between the PRDOH and the Contractor. A Contract modification is not binding for the PRDOH unless it is signed by the Secretary.

#### Section 4 Records

The Procurement File shall include all documents related to every modification to the original procurement, including the following:

- a. Any additional Contract or Purchase Order requirements resulting from the modification;
- b. Funding, coding and authorization number from the Finance Department;
- c. Proof of insurance in effect covering the modification and acceptance thereof by the Insurance Division;
- d. Number and description of every modification to the Contract or Purchase Order; and
- e. Itemized and aggregate cost of all modifications to the Contract or Purchase Order.

### **ARTICLE XIV CONTRACTOR QUALIFICATIONS AND DUTIES**

#### Section 1 Determination of Contractor Eligibility and Responsibility

PRDOH and its subgrantees must ensure that all contractors receiving CDBG-DR funds meet all eligibility requirements. The following steps should be taken to verify and document contractor eligibility for all services procured.

Prior to the award of a contract with a prime contractor, PRDOH or its subgrantee must obtain contractor clearance. To obtain clearance, the following steps should be taken:



1. The procuring entity should search the following web site: <https://www.sam.gov/portal/public/SAM/> and retain documentation of the search results to confirm eligibility of the contractor.
2. The procuring entity must document verification of eligibility from Do Not Pay. The procuring entity should search databases listed below at the following website, <https://www.donotpay.treas.gov> and retain documentation of the search results which shall include verification of the entity's eligibility:
  - a. Credit Alert System;
  - b. Death Master File;
  - c. List of Excluded Individual and Entities;
  - d. Office of Foreign Assets Control;
  - e. System for Award Management (SAM) Entity Registration Records;
  - f. SAM Exclusion Records; and,
  - g. Treasury Offset Program (TOP) Debt Check.
3. The search of the web site only determines whether the contractor is debarred; other types of performance information are not gathered.
4. The grantee must complete the Verification of Contractor Eligibility Form and maintain in the project file.

Contracts and/or Purchase Orders shall be awarded to and executed only with Responsible Contractors, in accordance with 2 CFR 200.318(h) that is, those who have:

- a. Financial resources and capability;
- b. Ability to comply with the required or proposed delivery or performance schedule;
- c. A satisfactory performance record and compliance with public policy of PRDOH or other state or governmental agencies;
- d. A record of proven integrity and business ethics;
- e. The necessary organization, experience, accounting and operational controls, the technical skills, or the ability to obtain them;
- f. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
- g. Other qualifications under applicable law and regulations, including none suspended, debarred or under a HUD- imposed "Limited Denial of Participation (LDP)". This type of HUD determination will automatically classify the Contractor as ineligible for an award of a Contract.

Based on the above, the Procurement Area shall prepare a written Determination of Responsibility or Non-Responsibility, as applicable, including the reasons therefore, and shall include such Determination, in the Procurement File. The PRDOH 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 the PRDOH or another governmental agency.

#### Section 2 Subcontractor Clearance



The PRDOH does not clear subcontractors. The PRDOH and its subgrantees are required to make prime contractors aware that it is their responsibility to verify subcontractor eligibility based on factors such as those listed in Section 1 of this Article. 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 the federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, PRDOH 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 PRDOH.

## ARTICLE XV CONTRACT ADMINISTRATION AND MONITORING

### Section 1 General

- a. Contract administration consists of the actions taken by the PRDOH or its subgrantee after the award of a Contract in accordance to the Implementation Plan (see Monitoring Plan Appendix), to ensure it is successfully performed in accordance with the terms and conditions agreed by the parts in writing, per 2 CFR 200.318(b). The PRDOH must administer the execution of the Contract from the date the Contractor begins to offer its services (Construction Contract - "Notice to Proceed"), to the date the Contract is terminated or the goods and services are finally delivered (Non-construction Contract); and in both cases, the date the last payment is approved and issued. The Compliance and Monitoring Division, the Internal Audit Division, and the Compliance Specialist from the Finance Department, are responsible for the oversight and compliance in monitoring contract administration.
- b. The Compliance and Monitoring Division has the crucial responsibility of monitoring the Contractor's performance under the Contract and to enforce applicable bonds and/or warranties with the assistance of the Procurement Area until the closeout of the Contract.
- c. If the Contractor is not satisfactorily performing under the terms and conditions of the Contract, the Compliance and Monitoring Division shall notify the Procurement Area, in writing. The Procurement Area will refer the situation to the Office of the Legal Advisor who will assess it and decide whether to terminate the Contract for default, send a Cure Notice, and enforce applicable bonds and/or warranties, or any other feasible alternative.
- d. Upon satisfactory completion of the Contract, the Procurement Area in conjunction with the Compliance and Monitoring Division will close out the Contract. All Contract records must be kept by each Contractor and the PRDOH for a minimum of three (3) years after final payment and/or the Contract's closeout.

### Section 2 Details of the User Area's Responsibilities

- a. The Compliance and Monitoring Division will not authorize or issue any Change Order.





- b. The Compliance and Monitoring Division is responsible for monitoring each Contractor's performance and for reporting, in writing if possible, to the Procurement Area all incidents of non-compliance with the terms and conditions of the Contract. If there is any doubt as to whether an incident is noncompliant, the Compliance and Monitoring Division must contact the Procurement Area.
- c. The Compliance and Monitoring Division is responsible for promptly inspecting, accepting, rejecting or taking all necessary action with respect to delivery of conforming or non-conforming goods, construction work and/or services, and is responsible for supervising the performance of the same. The PRDOH is not obligated to accept or pay for the goods or services until the Compliance and Monitoring Division has had the opportunity to inspect them. The inspection must take place within a reasonable time after delivery of goods, construction work and/or services.

### Section 3 Acceptance or Rejection of Goods and Services

Acceptance shall take place by the Compliance and Monitoring Division. Upon receipt of evidence of acceptance and a review by the Finance Monitoring Specialist, the Finance Department will pay to the Contractor according to provisions of the Contract for all goods, services and/or construction works accepted, within the time allotted by the Finance Department for payment of invoices.

When goods or services do not conform to the Contract, the User Area shall inform the Procurement Area, who shall:

1. Reject defective goods, construction works and/or services, in which case, the Contractor may be declared in default, unless it can furnish conforming items within the Contract delivery schedule; or
2. Issue a Cure Notice requiring the Contractor to cure the defective goods, construction works and/or services within a special delivery schedule.

### Section 4 Suspension and Debarment

If the Contractor fails to cure the defects, the Procurement Area may accept the goods, construction works and/or services and negotiate a reduction in the Contract price or refer the Contract to the Office of the Legal Advisor of the PRDOH to terminate the Contract for default. Purchase Orders or Contracts shall not be awarded to debarred, suspended, Non-Responsible or ineligible Contractors. Contractors may be suspended or debarred by HUD in accordance with the debarment procedures determined by HUD pursuant to 24 CFR Part 24 as in effect on the date thereof and as the same may be amended from time to time.

The PRDOH must also create a system to administer and monitor the execution of the Contracts; make sure the Contractor understands the performance requirements of the Contract; establish a system for receiving supplies, equipment, and services; monitor and inspect supplies and services; enforce specifications, timelines, labor standards and other Contract requirements.



## **ARTICLE XVI SECTION 3: LOW AND VERY LOW- INCOME PERSONS OR FIRMS PARTICIPATION**

### Section 1 General

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1710 (u) (hereinafter "Section 3") is to ensure that the employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons and businesses, particularly persons who are recipients of HUD assistance for housing. PRDOH, its subgrantees and its contractors will comply with HUD's regulations set forth in 24 CFR Part 135, which implement Section 3. All subgrant agreements and contracts funded by the CDBG-DR Program shall include the Section 3 clause and a certification from the parties to the agreement that the entity is under no contractual or other impediment that will prevent them from complying with 24 CFR Part 135.

### Section 2 Affirmative Action

PRDOH will make efforts and outreach to individuals (low or very low-income persons) or firms located in or owned substantially by residents, women or persons who are residents of the public housing authorities or Section 3 residents from the area where the CDBG-DR project is located, as part of its efforts to comply with Section 3. This outreach is made mainly through the Economic Development Division of the Residents and Community Programs Area. The PRDOH will offer employment and training opportunities not only to its employees, but also to residents, women, minority or persons with low or very low-income in the public housing projects or the area where the public housing project is located, who would like to participate in this process and are qualified for the positions. The Resident Councils in the public housing projects and its agents will help identify these persons or firms. PRDOH will require subgrantees and contractors to post information of job opportunities at Central Office for all persons interested, including residents, women, minority or persons with low or very low-income in the public housing projects or the area where the public housing project is located.

PRDOH will include the Section 3 clause in every Contract or Subcontract subject to compliance with regulations in 24 CFR Part 135. Noncompliance with HUD's regulations 24 CFR Part 135 will result in the termination of the Contract or Subcontract.

The PRDOH, its subrecipients and the program contractors will also offer employment and training opportunities to residents, women or persons with low or very low- income in the public housing projects or the area where the public housing project is located. These agents, according to the Contract signed with PRDOH, agree to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization workers



or representative of its commitments under Section 3 clause, and shall post copies of this notice in conspicuous places at the sites where both employees and applicants for training and employments positions can see the notice. Noncompliance with HUDs regulations, 24 CFR Part 135, will result in the termination of the Contract or Subcontract.

All contractors shall pay not less than the wages prevailing in the locality, as determined by and adopted by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians, as established in Section 12 of the Housing Act. In the Procurement Area, PRDOH will develop procedures to assess and evaluate proposals received by Section 3 Resident-Owned Participant Vendors, Women Business Enterprise (WBE) and Minority Business Enterprise (MBE) programs. These procedures will be, but are not limited to, the following:

- a. In determining the responsibility of potential Contractors, consider their record of Section 3 compliance based on past actions and current plans related to the pending Contract.
- b. Contacting business assistance agencies, minority Contractors (MBE/WBE) associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for Contracts for work in connection with Section 3 covered assistance.
- c. Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the administrative offices of the projects.
- d. Contacting resident councils and other resident organizations and requesting their assistance in identifying business concerns.
- e. Providing written notice to all known Section 3 businesses or businesses concerns about contracting opportunities, with sufficient time to participate in the Invitation for Bids or Request for Proposal.
- f. Informing Section 3 businesses or businesses concerns in pre-bid meetings about future opportunities of contracting.
- g. Carrying out workshops on contracting procedures and specific Contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities.
- h. Advise Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- i. Where appropriate, breaking out Contract work items into economically feasible units to facilitate participation by Section 3 business concerns.
- j. Contacting agencies administering HUD Youth Programs and notifying these agencies of the contracting opportunities.
- k. Developing a list of eligible Section 3 business concerns.
- l. Establishing or sponsoring programs designed to assist residents of public housing in the creation and development of Resident Owned Businesses.



- m. Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), and other local agencies.
- n. Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial needs.
- o. Actively supporting joint ventures with Section 3 business concerns and other businesses that assist them.

PRDOH's Procurement Area shall also provide a preference of five (5) points in the evaluation criteria of the method of rating, for mayor participation of Section 3 businesses concerns in the Formal Bid procurement process.

## **ARTICLE XVII CONFLICTS OF INTEREST AND ETHICS IN PUBLIC CONTRACTING**

### Section 1 General

Since the awarding of a Contract or Purchase Order involves the disbursement of taxpayers' funds, PRDOH officials, agents, subrecipients, subgrantees and employees, as well as the Contractors involved in each procurement process owe a fiduciary duty to the PRDOH. Therefore, no PRDOH 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.

All PRDOH officials, agents, employees, subrecipients, subgrantees and Contractors shall maintain an exemplary degree of honesty, integrity and impartiality when procuring, directly or indirectly, goods, work and/or services, and in the execution and/or performance of Contracts or Purchase Orders for the agency.

It is mandatory that every official, employee, agent, subrecipients, subgrantees, and contractors adhere strictly to the ethical standards in public contracting as set forth in 2 CFR 200.318(c)(1), the HUD Procurement Handbook 7460.8 REV-2 as a Guide Book, Puerto Rico Government Ethics Act of 2011 (Law Number 1, approved on January 3rd, 2012, as amended), Law Number 2, approved on January 4<sup>th</sup>, 2018, this Manual, and all applicable federal and state laws and regulations in force now or as they may be amended in the future.

### Section 2 Prohibitions

All provisions contained in the Puerto Rico Government Ethics Act of 2011 (Law Number 1, approved on January 3rd, 2012), shall be deemed applicable to this Manual. Whenever the Law mentions the phrase "public servant", in terms of, it refers to "officials, employees, subrecipients and subgrantees". Whenever the Law mentions "appointing authority" and



"Executive Director", in terms of PRDOH, it refers to "Secretary". Most of the prohibitions that apply to officials and employees, shall be interpreted to also apply to PRDOH agents, subrecipients, subgrantees and contractors due to their fiduciary duty to the PRDOH.

All provisions contained in the Anti-Corruption Code for the New Puerto Rico, Law Number 2, approved on January 4th, 2018, as amended, shall be deemed applicable to this Manual. Specifically, those prohibitions included in Title III "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives from Puerto Rico's Government".

## **ARTICLE XVIII ADMINISTRATIVE AND APPELLATE REMEDIES**

### Section 1 General

It is the PRDOH's public policy to informally resolve all issues related to a Contract arising under a Purchase Order or a Contract at the administrative level without recourse to the judicial forum.

When the amount of the Purchase Order or Contract is equal or less than the Small Purchase Threshold or \$250,000.00, the Supplier or Contractor shall have the opportunity to assert with the Contracting Officer or present a claim which will be solved by the Contracting Officer in a determined period according to internal rules. The Supplier or Contractor will always be informed of its right to be heard.

Disputes, bid protests and other Contractor claims related to Bids or Contracts which amounts exceed the Small Purchase Threshold or \$250,000.00 shall be handled in accordance with the applicable local provisions of Regulation Num. 6106, Bid Board Regulation of the Department and its affiliated Agencies of February 25, 2000 and Regulation Num. 6793, Regulations of the Bid Review Board of March 29, 2004, and to the extent modified by this Manual. Both regulations are based on the administrative procedures established in Law Number 38; approved June 30, 2017, as amended, known as the "Law of Administrative Uniform Procedures" of Puerto Rico, particularly Section 3.19 of this Law which refers to the administrative procedures of Bids. HUD will retain jurisdiction for review over claims of violations of federal laws and regulations after all administrative remedies at the local level have been exhausted.

### Section 2 Administrative Procedure (Request for Reconsideration and Judicial Review)

Any person, party or entity that considers itself having been adversely affected by an award determination of the Bid Board made under the provisions of this Manual, may file a petition for reconsideration (Request for Reconsideration with the Department's Bid Review Board within twenty (20) days from the date on which a copy of the Award Notice or Resolution was duly notified in accordance with Section 3.19 of Law Number 38-2017, supra. 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 Puerto Rico Department of Housing (PRDOH). Alternatively, a petition for review may be filed before the Court of Appeals of Puerto Rico.

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 Law No. 38-2017, supra.

**ARTICLE XIX SEVERABILITY CLAUSE**

If any provision of this Manual is held to be unconstitutional or void by any court with jurisdiction, such judgment will not affect, impair or invalidate the remaining provisions of this Handbook.

**ARTICLE XX PREVAILING VERSION**

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 XXI EFFECTIVE DATE**

This Manual shall take effect immediately upon its filing with the Department of State of the Government of Puerto Rico.

APPROVED in San Juan, Puerto Rico, on the \_\_\_\_ of \_\_\_\_\_, 201\_.

FERNANDO A. GIL ENSEÑAT  
SECRETARY

PRESENTED ON: \_\_\_\_\_

APPROVAL DATE: \_\_\_\_\_