



CDBG-DR

FREQUENTLY ASKED QUESTIONS (FAQ)

PROCUREMENT MANUAL FOR THE CDBG-DR PROGRAM

(PROCUREMENT MANUAL)

REGULATION NO. 9205 OF AUGUST 4, 2020

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1 Introduction

This document discusses the Community Development Block Grant – Disaster Recovery (**CDBG-DR**) procurement process using a frequently asked questions (**FAQ**) format. While the document is detailed, is important to take into consideration that every situation is unique and deserves careful individual review.

To facilitate the use of this document, the responses will reference the Regulation No. 9205 of August 4, 2020, effective on September 3, 2020, on the Procurement Manual for the CDBG-DR Program (**Procurement Manual**).

The Procurement Manual for the CDBG-DR Program is available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

2 General

2.1 What regulation governs PRDOH CDBG-DR procurements?

In its administration of the CDBG-DR Program, PRDOH opted to use its own procurement procedures as set forth under the Procurement Manual for the CDBG-DR Program (Procurement Manual) which reflect applicable state and local laws and regulations providing for full and open competition. (Refer to Procurement Manual Article I, Section 1.2, Legal Basis).

2.2 What statutes and regulations authorize the Procurement Manual?

This Manual is adopted pursuant to the authority granted to the Puerto Rico Department of Housing (PRDOH) in Articles 4-A and 4-B, 3 L.P.R.A. § 441c-1 to 441c-2, of Act Number 97, approved on June 10th, 1972, as amended, known as the "Organic Act of the Department of Housing", 3 L.P.R.A. § 441 et seq., (Act 97-1972), and in accordance with (i) Act Number 38, approved on June 30, 2017, as amended, known as the "Puerto Rico Uniform Administrative Procedure Act" (LPAU, for its Spanish acronym), (ii) 2 C.F.R. part 200, effective as of the date hereof and may be amended hereafter, (iii) Public Law 115-56, known as the Continuing Appropriations Act, 2018 and the Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Appropriations Act), and Public Law 115-123, known as the Bipartisan Budget Act of 2018 (iv) Federal Notice FR-6066-N-01 issued by the U.S. Department of Housing and Urban Development (HUD) and all subsequent waivers and amendments issued thereto (collectively, the Notice) (v) Regulation No. 7854 of May 21, 2010, known as the Regulation for Purchases of Goods and Non Personal Services of the Department and its Components (Regulation No. 7854), (vi) Regulation No. 6106 of February 25, 2000, known as the Regulation for Bids of the Department and its Components Regulation (Regulation No. 6106), as amended, and (vii) Regulation No. 6793 of March 29, 2004, known as the Regulation for the Bid Revision Board (Regulation No. 6793), as amended, all of which will complement this Manual. (Refer to Procurement Manual Article I, Section 1.2, Legal Basis).

2.3 Who does the Procurement Manual apply to?

These regulations and requirements shall be imposed on all subgrantees and/or subrecipients of the CDBG-DR Program. (Refer to Procurement Manual Article I, Section 1.5, Applicability).

2.4 What are the objectives of the procurement revision?

Establish standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, and other professional services for PRDOH's CDBG-DR Program. Ensure procurements are conducted in a manner providing full and open competition or fair treatment for all persons or entities involved in each and every PRDOH procurement process funded totally or partially with federal funds. (Refer to Procurement Manual Article I, Section 1.4, Purpose).

2.5 Do we need to provide for full and open competition?

All procurement transactions must be conducted in a manner providing full and open competition and consistent with the standards of Article 1, Section 1.6 of the Procurement Manual. Objective performances must be ensured, and unfair competitive advantages must be avoided (i.e. a contractor involved in the development of a procurement cannot compete for any such procurement). (Refer to CDBG-DR Procurement Manual Article I, Section 1.6, Competition).

2.6 Which situations can be considered restrictive of full and open competition?

Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- 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
- Any arbitrary action in the procurement process.

(Refer to Procurement Manual Article I, Section 1.6, Competition).

2.7 Can geographical preferences be imposed?

The use of statutorily or administratively imposed state, local or geographical preferences in the evaluation of bids or proposals is prohibited. Nothing in this section preempts state licensing laws. When procuring for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application allow an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. (Refer to Procurement Manual Article I Section 1.6, Competition).

2.8 What must be always included in a solicitation?

All solicitations of offers shall incorporate a clear accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include the material, product, or services' essential characteristics to which it must conform to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. References to a brand name shall be followed by the words "or equal". The descriptions of the named brand characteristics that must be met shall be clearly stated. (Refer to Procurement Manual Article I Section 1.6, Competition).

2.9 What is an Independent Cost Estimate?

An Independent Cost Estimate (**ICE**) is an independent analysis of the estimate of the cost of the goods or services to be acquired, prepared by the procuring entity staff or a third-party prior to publishing a solicitation for offers. (Refer to Procurement Manual Article II Section 2.1, Interpretation and Definition of Terms). The ICE is a confidential document and its publication may impact the full and open competition. Independent should be interpreted to mean independent from offerors and prior to offers being received. (Refer to Procurement Manual Article VII Section 7.2, Independent Cost Estimate).

2.10 What are the steps to obtain contractors clearance?

Prior to the award of a contract, PRDOH or its subrecipient must obtain Contractor and First Tier Subcontractor clearance, if applicable. 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 obtain documentation of the search results to confirm eligibility of the contractor.
2. The procuring entity should search the following web site: Search https://www.hud.gov/topics/limited_denials_of_participation and obtain documentation of the search results to confirm eligibility of the contractor. (Refer to Procurement Manual Article XII, Section 12.1, Determination of Contractor Eligibility and Responsibility).

2.11 Subcontractors need to obtain a clearance?

The prime contractors have the duty to verify subcontractor eligibility. The prime contractor must also use the web site: <https://www.sam.gov/portal/public/SAM/> to determine if a subcontractor has been debarred at a federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, the procuring entity urges prime contractors to closely scrutinize subcontractors. If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated, and the matter reported to the procuring entity. (Refer to Procurement Manual Article XII, Section 12.2, Subcontractor Clearance).

2.12 What is the System for Award Management (SAM) and how can you register for the SAM?

The System for Award Management (**SAM**) is a requirement to participate in CDBG-DR procurement processes. All prospective vendors/contractors that will receive federal funds must be registered in SAM. There is no cost in registering in SAM. To register you may visit <https://sam.gov/SAM/>.

2.13 What is a responsive offeror?

A responsive offeror is a contractor whose offer conforms to the terms set out by the solicitation.

2.14 Under what circumstances might an offer be disqualified or rejected?

Offers that do not conform to the requirements of the procurement process instructions will be disqualified. Late offers will not be accepted.

2.15 Where can I find information on conflicts of interest?

The Conflict of Interest and Standards of Conduct Policy are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>

2.16 Where past PRDOH CDBG-DR Program procurements can be found?

More information regarding past and on-going procurements are available in English and Spanish on the PRDOH website <https://www.cdbg-dr.pr.gov/en/cdbg-dr-procurement/> and <https://www.cdbg-dr.pr.gov/subastas/>.

3 Methods of Procurement

3.1 What are the most used procurement methods?

The most used procurement methods are Micro Purchase, Small Purchase, Invitation for Bids and Request for Proposals.

3.2 What is a Micro Purchase?

A micro-purchase is the acquisition of goods or services that not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). (Refer to Procurement Manual Article VIII, Section 8.3, Micro Purchases).

3.3 What is a Small Purchase?

A small purchase is the acquisition of goods or services from \$10,001 and not exceeding \$250,000. The price or rate quotations must be obtained from an adequate number of qualified sources. Therefore, not less than **three (3)** offers' shall be solicited to submit a price quotation or offer depending on the complexity of the procurement. (Refer to Procurement Manual Article VIII, Section 8.4, Small Purchases).

3.4 When should be used an Invitation for Bids?

An Invitation for Bids shall be used when the cost estimate exceeds the Small Purchase Threshold (more than the \$250,000) and:

1. Complete, adequate, and realistic specifications or a purchase description is available;
2. Two or more responsible bidders are willing to compete effectively; and
3. The procurement lends itself to a firm fixed price contract and the selection can be made principally on the basis of price.

(Refer to Procurement Manual Article VIII, Section 8.5, Sealed Bidding Method).

3.5 What are the requirements of the Invitation for Bids?

The IFB shall include specifications, all contractual terms and conditions applicable to the procurement, and a statement that the award will be made to the lowest Responsible and Responsive Bidder whose Bid meets the requirement of the solicitation. The IFB must state the time and place for both receiving the Bids and the Public Bid Opening. The IFB shall include the date the Contracting Officer will hold a Pre-bid Conference. The time between the advertisement of the IFB and the date of the Pre-bid Conference should be sufficient for the bidders to review the IFB and prepare for the conference. Nothing said at the Pre-bid Conference will change any of the terms of the IFB, except a written amendment to the solicitation. (Refer to Procurement Manual Article VIII, Section 8.5, Sealed Bidding Method).

3.6 When should be used the Request for Proposals?

The Request for Proposals (RFP) should be use when acquiring goods or services for an amount exceeding \$250,000 and when conditions are not appropriate for the use of an Invitation for Bids. (Refer to Procurement Manual Article VIII, Section 8.6.1, Request for Proposals).

3.7 What are the requirements of the Request for Proposals?

The Request for Proposals (RFP) shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors and price. A mechanism for fairly and thoroughly evaluating the technical and price Proposals shall be established before the solicitation is issued. Proposals shall be handled to prevent disclosure of the number of Proposals, identity of the Proposers, and the contents of their Proposals until after award.

The proposals will be evaluated by an Evaluation Committee. The Evaluation Committee must base the evaluation of the Proposals only on the criteria established in the RFP. The Procurement Division will provide the necessary guidance to the designated Evaluation Committee members to support a standardized and consistent evaluation process for reach procurement. (Refer to Procurement Manual Article VIII, Section 8.6.1, Request for Proposals).

4 Minority, Small and Section 3 Business Participation

4.1 What is Section 3?

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701u. Section 3 helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low or very-low income residents.

4.2 What is Minority and Women Business Enterprise?

Minority Business Enterprise (MBE) is defined as a business which is at least 51% owned, operated and controlled on a daily basis by one or more (in combination) American citizens of the following ethnic minority and/or gender (e.g. woman-owned) and/or military veteran classifications:

- African American;
- Asian American;
- Hispanic American;
- Native American;
- Hasidic Jew;
- Persons with disabilities; and
- Other individuals who can prove social and economic disadvantage.

Women Business Enterprise (WBE) is a business concern that is at least 51% owned and controlled by one or more women, that:

- Must be U.S. citizens or Legal Resident Aliens;
- Whose business formation and principal place of business are in the U.S. or its territories; and
- Whose management and daily operation are controlled by women.

4.3 Where can I find information on Section 3 and Minority and Women Business?

Information regarding PRDOH policy and tools available to fulfill Section 3 and Minority and Women Business participation for new hires, training, contracting and other economic opportunities can be found in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/section-3/> and <https://www.cdbg-dr.pr.gov/seccion-3/>.

5 Any other Questions?

For any questions regarding procurement processes you can contact the Procurement Division of CDBG-DR Program. Please call: 787-274-2527 ext. 6618 or send an email to: cdbgdr-procurement@vivienda.pr.gov.

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