

Section 6

Procurement Methods and Contractual Requirements

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Section 6 - Procurement Methods and Contractual Requirements

1.0 Introduction

This Section establishes standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services for Disaster Recovery CDBG 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 Federal and State laws and executive orders.

These standards do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement entered in support of a grant. These include, but are not limited to, source evaluation, protests, disputes, and claims.

2.0 Definition of Terms

1. **Acquisition** - The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.
2. **Architect-engineer services** - As defined in 40 U.S.C. 1102, means:
 - a. 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;
 - b. 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; or,
 - c. Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.
3. **Bid or sealed bid** - An offer in response to invitations for bids (sealed bidding)

4. **Change order** - A written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.
5. **Cognizant Federal agency** - The Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.
6. **Contract** - A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.
7. **Contracting** - Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes the description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.
8. **Cost analysis** - 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.
9. **Cost-reimbursement Contracts** - Provide for payment of allowable incurred costs, to the extent prescribed in the contract.
10. **Firm-fixed-price contract** - Provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
11. **Offer** - A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals"; however, responses to requests for quotations (simplified acquisition) are "quotations", not offers.
12. **Offeror** – Bidder
13. **Price analysis** - The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.
14. **Requests for proposals (RFPs)** - Solicitations under negotiated procedures and are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals.
15. **Request for qualifications (RFQs)** - Solicitations under negotiated procedures and are used in negotiated acquisitions to procure the services of an engineering or architectural firm.

16. **Sealed bidding** - A method of contracting that employs competitive bids, public opening of bids, and awards.
17. **Sole source acquisition** - A contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.
18. **Solicitation** - Any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids”. Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.
19. **Subcontract** - Any contract as defined above “Contract” entered into by a subcontractor to furnish supplies or services for performance of a prime contract, or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
20. **Subcontractor** means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

3.0 Procurement Policy

A procurement policy must be written and adopted prior to securing contract services. If a procurement policy is already in place, the grantee must determine whether it includes all federal requirements contained in 24 CFR 85.36. If the policy does not contain all federal requirements (and the grantee intends to use Disaster Recovery CDBG funds to pay for such services), the policy must be amended accordingly. A sample procurement policy is included as Exhibit 6-1.

The grantee’s procurement policy must address the following:

1. A code of conduct that prohibits elected officials, staff, or agents from personally benefiting from Disaster Recovery CDBG procurement must be included. The policy should prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors. Sanctions or penalties for violations of the code of conduct by either grantee officials, staff or agents, or by contractors or their agents must be identified [24 CFR 85.36 (b) (3)].
2. Proposed procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to insure costs are “reasonable” [24 CFR 85.36 (b) (4)].
3. Affirmative efforts must be undertaken to hire women’s business enterprises, minority firms and labor surplus firms, both by the grantee and the project’s prime contractor [24 CFR 85.36 (e)].
4. The method of contracting outlined in the policy should be acceptable (fixed price, cost reimbursement, purchase orders, etc.). Cost plus a percentage of cost contracting must be specifically prohibited if Disaster Recovery CDBG funds are involved [24 CFR 85.36 (f) (4)] and percentage construction cost.
5. Procedures to handle and resolve disputes relating to procurement actions of the grantee must be included [24 CFR 85.36 (b) (12)].
6. All procurement transactions, regardless of dollar amount, must be conducted so as to provide “maximum open and free competition” [24 CFR 85.36 (c)]. Some of the situations considered to be restrictive of competition include, but are not limited to:

- a. Placing unreasonable requirements on firms in order for them to qualify to do business; Requiring unnecessary experience and excessive bonding;
 - b. Noncompetitive pricing practices between firms or between affiliated companies;
 - c. Noncompetitive awards to consultants that are on retainer contracts;
 - d. Organizational conflicts of interest;
 - e. Specifying only a “brand name” product instead of allowing an “equal” product to be offered and describing the performance of other relevant requirements of the procurement; and
 - f. Any arbitrary action in the procurement process.
7. Methods of procurement to be followed must be included (Subsections 7.0 through 11.0 below and 24 CFR 85.36 (d)).

4.0 Procurement Procedures

4.1 Selection Procedures

Selection procedures for procurement transactions must be written prior to securing contract services [24 CFR 85.36(c) (3)]. These procedures must ensure that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
2. All requirements which the offerors must fulfill; and
3. All other factors used in evaluating bids or proposals.

4.2 Preparing Contracting Procedures to Meet Equal Opportunity Requirements

Applicable equal opportunity language must be included in the bid specifications and contract documents, contractor eligibility must be verified, required documentation must be secured, and compliance must be monitored. See Exhibit 6-2 for sample bid documents and construction contract provisions.

Disaster Recovery CDBG recipients must make affirmative efforts to use minority and women-owned firms when possible:

1. Place qualified firms on solicitation lists.
2. Divide total requirements into smaller tasks.
3. Establish delivery schedules that encourage participation.
4. Use SBA and Minority Business Development Agency services.
5. Require prime contractors to take same affirmative steps.

A description of the equal opportunity provisions and their applicability are found in Section 8 - Civil Rights.

5.0 Conflict of Interest

An organizational conflict of interest means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to

the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Conflicts of interest in the award and/or administration of contracts must be avoided. “No employee ... of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, **real or apparent** (perceived), would be involved. Such a conflict would arise when...the employee, any member of his (her) immediate family, his or her partner...has a financial or other interest in the firm selected for award” (24 CFR 85.36(b) (3)). Other federal regulations with which the grantee must comply are the conflict of interest requirements in 24 CFR 489(H) which are included as Exhibit 6-3.

Conflicts of interest may be governed also by state law (located in a memorandum from the Louisiana Board of Ethics at: www.ethics.state.la.us/Pub/InfoSheets/GiftsRev2-09.pdf) or local law or ordinance.

Example of a real or apparent (perceived) conflict:

A jurisdiction desires to hire a contractor to perform grant administration activities and engineering services related to a Disaster Recovery CDBG project. The jurisdiction conducts separate procurements for each of these separate services. After evaluating proposals for each services, the jurisdiction elects to award both the grant administration and engineering services to the same entity.

This situation may or may not, in itself, result in a conflict of interest, but that must be determined prior to signing the contracts. Consideration should be given to what responsibilities the grant administrator, per contract, will exercise over engineering services, and then follow the procedures in 24 CFR 489(h) in order to receive permission from the OCD-DRU, acting as HUD, to proceed.

6.0 Contract Administration and Records

24 CFR 85.36 (b)(9) requires that grantees and subgrantees to maintain records sufficient to detail the significant history of a procurement. These records must include, but are not limited to, the following:

1. Rationale for the method of procurement;
2. Selection of contract type;
3. Contractor selection or rejection; and,
4. The basis for the contract price.

Grantees shall also maintain a contract administration system to monitor contractor’s performance against the terms, conditions, and specifications of their contracts or purchase orders.

The full lists of required procurement and contract documents that must be maintained are included in Section 4 – Records Management. The procurement records should:

1. Allow an auditor or other interested party to track the nature of the goods or services bought with public funds;
2. Track the entire process used to purchase those goods and services; and,
3. Show that the public body obtained high quality goods and services at the lowest possible price through an open, competitive process.

7.0 Methods of Procurement Overview

The procurement process must be in accordance with the federal requirements of 24 CFR 85.36 and Louisiana’s Public Bid Law (LRS 38:2211-2296).

The following table outlines the four procurement methods that the grantee must use to procure materials, supplies, construction and services.

Procurement Type	Cost Reasonableness	Contract Type	Solicitation Method	Applications
Small Purchase See 8.0	<ul style="list-style-type: none"> • Price Analysis 	<ul style="list-style-type: none"> • Purchase Order • Fixed Price 	<ul style="list-style-type: none"> • Quotations • Submitted Bids 	<ul style="list-style-type: none"> • Produced Items • Single Task Service • Supplies
Sealed Bid (formal advertising) See Subsection 9.0	<ul style="list-style-type: none"> • Price Analysis 	<ul style="list-style-type: none"> • Fixed Price 	<ul style="list-style-type: none"> • Submitted Bids 	<ul style="list-style-type: none"> • Construction Items • Produced or Designed Items
Competitive Proposals See Subsection 10.0	<ul style="list-style-type: none"> • Price Analysis • Cost Analysis 	<ul style="list-style-type: none"> • Cost Reimbursement • Fixed Price • Time & Materials 	<ul style="list-style-type: none"> • Submitted Proposals 	<ul style="list-style-type: none"> • Professional Services • Multi Task Services • Designed Items
Noncompetitive Proposals See Subsection 11.0	<ul style="list-style-type: none"> • Cost Analysis 	<ul style="list-style-type: none"> • Cost Reimbursement • Fixed Price • Time & Materials 	<ul style="list-style-type: none"> • Submitted Proposals 	<ul style="list-style-type: none"> • Produced Items • Single Task Service • Professional Services • Multi Task Services • Designed Item

7.1 Cost Reasonableness

When determining the appropriate procurement method to use, the grantee must either use Price Competition or perform a Cost Analysis to determine reasonableness of costs.

7.1.1 Price Analysis

Price Analysis means that the grantee requests several bids, proposals, or quotes for the materials, supplies, or service being procured. The winning offeror is the firm that offers the most competitive price for the requested materials, supplies, and services.

7.1.2 Cost Analysis

A 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. A Cost Analysis is verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits. A Cost Analysis is always required when the Noncompetitive Proposals method is used. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established. Exhibit 6-4, contains a sample form that can be used to perform the cost analysis.

Exhibit 6-5, provides additional guidance in performing a cost-price analysis.

7.2 Contract Type

7.2.1 Purchase Order

Supplies, single task services, and produced items procured through the small purchase method will require a purchase order.

7.2.2 Fixed Price

A Fixed Price Contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. Firm-fixed-price contracts are suitable for acquiring commercial items (including construction) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset.

7.2.3 Cost Reimbursement

A Cost Reimbursement contract provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts will be used when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

7.2.4 Time and Materials

A Time and Materials contract provides for payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials. This contract type should be used only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.

7.3 Solicitation Methods

7.3.1 Quotations

The grantee should obtain at least three quotations (“quotes”) from qualified sources to procure items, supplies, or a single task service using the small purchase method. The response of “not interested” does not qualify as a quote.

7.3.2 Submitted Bids

When using the procurement by sealed bids method, the grantee is required to provide a complete, adequate, and realistic specification or purchase description via publicly advertised

invitation for bids. A submitted bid is a response to the grantee's invitation for bids. See Subsection 9.0, below, for additional information regarding the bids package process.

7.3.3 Submitted Proposals

Submitted proposals are the responses to a grantee's Request for Proposal (RFP) or Request for Qualifications (RFQ). This type of solicitation method is used when the competitive proposal or noncompetitive proposal procurement method is used. See Subsections 10.1 and 10.2, below, for additional information regarding the RFP and RFQ process.

8.0 Procurement by Small Purchase

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property (currently set at \$150,000 effective December 26, 2014). If small purchase procedures are used, price or rate quotations shall be obtained from at least three qualified sources. The grantee can request quotes from qualified sources via telephone, fax, email, mail, or any other reasonable method. The grantee should maintain written documentation on the names of the businesses contacted and how they were contacted; the prices that were quoted; and the basis for selecting one firm over the other(s).

9.0 Procurement by Sealed Bids (formal advertising)

Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price- see below) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions below, apply.

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

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

If sealed bids are used, the following requirements apply:

1. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
2. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
3. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
4. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts,

transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

5. Any or all bids may be rejected if there is a sound documented reason.

9.1 Creating, Advertising, and Opening Bids

Louisiana's Public Bid Law (LRS 38:2211-2296) and 24 CFR 85.36 provide specific requirements that must be followed when bid packages are created and advertised, as well as the required steps to take to conduct bid openings.

9.1.1 Creating the Bid Package

1. Write the technical bid specifications:
 - a. Usually written by the grantee's architect or engineer on the basis of prepared plans or working drawings.
 - b. Provide a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project.
 - c. Must be sealed by an architect or engineer registered in Louisiana.
 - d. If the project falls under the jurisdiction of another State agency (e.g., Department of Health and Hospitals for sewer and water projects), the plans and specifications must be approved by the cognizant State agency prior to construction.
 - e. For fire stations/garages and buildings that will be accessible to the public constructed, the architect or engineer must execute a certification that applicable standards of accessibility by the handicapped have been or will be satisfied or specify the basis for exemption. Such certification is to be co-signed by a City official, filed in the contract documents file, and a copy sent to the State.
 - f. The base bid should include all components of the approved project. The base bid should not include any items which were not included in the approved application or which have not received subsequent approval from the OCD-DRU.
2. Obtain all lands, rights-of-way and easements necessary for carrying out the project.
3. If the grantee's construction project involves real property acquisition, the grantee should make sure the acquisition is undertaken according to the provisions of the Uniform Relocation Act (URA). See Section 10 - Acquisition and Relocation for additional acquisition and URA guidance.
4. Contact the regional notification center and the owners of underground utilities or facilities that are not members of the regional notification center for the existence and location of all underground utilities and facilities within the construction area in accordance with R.S. 38:2223.
5. When preparing the plans and specifications for the bid package, the following requirements pertaining to service connection line and hookup fees must be kept in mind:
 - a. As stated in Section 24 CFR 570.202(b) (6) of the Housing and Community Development Act of 1974, as amended, the "financing of costs associated with

the connection of residential structures to water distribution lines or local sewer collection lines" is an eligible cost. It is eligible, however, as rehabilitation and will be considered as an integral part of the overall sewer or water project.

- b. Develop cost and pricing formats.
- c. Generally the street, water, sewer, utility and landscaping projects will be unit price contracts, while building type contracts will be lump sum.
- d. For fixed price contracts with unit cost pricing, the bid specifications should delineate each type of item, estimated quantity, unit price, and total cost.

9.1.2 Bid Process

The grantee must ensure that the bid process is in compliance with the Louisiana Revised Statutes, Title 38: Public Contracts, Works and Improvements. These statutes are continually being amended, revised, and superseded; therefore, it is the grantee's responsibility to assure compliance with the most recent and current regulations. The following steps must be taken prior to advertising for bids:

1. For Infrastructure projects, submit the final plans, specifications, and cost estimate to the OCD-DRU for review.
2. The grantee will be notified by OCD-DRU that they may advertise for bids.

9.1.3 Advertising for Bids

1. For projects that involve the development of plans and specifications, bids must be solicited by public advertising once approval to advertise is received from OCD-DRU.
2. The Public Bid Law requires that the advertisement for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality and the first advertisement shall appear at least 25 days before the opening of bids for construction projects.
3. For materials purchases, the Public Bid Law requires the advertisement to be published two times in a newspaper in the locality and the first advertisement shall appear at least 15 days before the opening of bids. The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday.
4. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until 24 hours before the bid opening date.
5. The advertisement must call the bidders attention to the conditions of employment and requirements of federal prevailing wage rates, Segregated Facility, Section 3 of the HUD Act of 1968, Section 109 and Equal Opportunity.
6. If the grantee and/or OCD-DRU amends the bid documents during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents.
7. No public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids, then the opening of bids

shall be extended for at least 7 days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum shall state the revised time and date for the opening of bids. A copy of each addendum shall be submitted to the OCD-DRU at the time the addendum is issued, including addenda solely pertaining to federal wage rate decisions.

8. All bids received prior to the opening of bids must remain sealed and in a safe place until the bid opening.
9. A copy of the publicized bid advertisement, including the publication date, must be submitted to the OCD-DRU staff person who is assigned to the grant once all three advertisements have been published.

9.1.4 Public Bid Opening

All bid openings must be conducted according to Louisiana Public Bid Law (LRS 38:2211-2296).

The following provides general guidance:

1. The bids should be read aloud during bid opening and the apparent low bidder should be determined during the bid opening
2. Bids must also be reviewed for both technical and legal responsiveness of bids.
3. The bidders must be evaluated as having the capacity to furnish products and/or services required.
4. Minutes of the bid opening, along with a tabulation of bids, should be placed in the contract file and sent to OCD-DRU (See Exhibit 2-4).

After the bid opening, the grantee must take action within 45 days to either award a contract to the lowest responsible bidder or to reject bids. The grantee and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days. Please refer to LRS 38:2215 for any exceptions. A public entity may reject any and all bids for just cause. For more information about “just cause”, see LRS 38:2214B. Also, a contract cannot be awarded with an incorrect federal wage decision. Make sure the grantee has verified the proper choice of the federal wage decision per the process described in Section 7 - Labor Regulations.

10.0 Procurement by Competitive Proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

1. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
2. Proposals will be solicited from at least three qualified sources;
3. Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
4. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and,
5. Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. This qualifications-based approach to the competitive proposals method may *not* be used to purchase other than A/E services.
6. **If only one bid or proposal is received, the Grantee must receive approval from the OCD-DRU.**

10.1 Request for Proposals (RFPs)

Request for Proposals (RFPs) are used to procure professional services except for A/E professional (design) services when the competitive negotiation method is used. Request for Qualifications are used to procure A/E professional services (See Subsection 10.2).

RFPs for competitive acquisitions shall, at a minimum, describe the:

1. Grantee's requirement;
2. Anticipated terms and conditions that will apply to the contract:
 - a. The solicitation may authorize offerors to propose alternative terms and conditions; and
 - b. When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (e.g., place of performance or payment and funding requirements)
3. Information required to be in the offeror's proposal; and,
4. Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance.

A sample advertisement of a RFP for an administrative consultant is included as Exhibit 6-6. Also included as Exhibit 6-7 is a Sample Scope of Services for Housing Rehabilitation Program to assist in the development of housing specific scope of services RFP. A sample RFP for an administrative consultant is included as Exhibit 6-8.

10.2 Qualification Statements - Architectural/ Engineering Services

Request for Qualifications (RFQs) are used to procure the professional (design) services of an engineering firm or architectural firm when using the competitive negotiation method. Qualification statements cannot be used to procure any other service. See Exhibit 6-9 for a sample of a request for qualification statements for procuring engineering/architectural services. A selection is made based on the competitors' qualifications, subject to negotiation of fair and

reasonable compensation. The qualification statements must be evaluated by the selection criteria identified in the RFQ. The grantee should negotiate costs with the top ranked firm.

RFQs cannot be used to procure project management or construction management services. These types of services must be procured using an RFP (See Subsection 10.1).

10.3 Review of Responses

One of two procedures can be used to review responses to an RFP or an RFQ. The procedure chosen must be identified in the advertisement, and the procedure cannot be changed once the procurement process is initiated.

1. Establish a predetermined competitive range of points for proposals that would be considered to qualify for the job. All firms whose proposals scored within that range would be invited to an oral interview and asked to submit a “best and final offer”. The proposals would be re-evaluated and the highest scoring firm would be chosen.
2. Evaluate the proposal(s) according to the selection criteria and award the contract to the highest scoring firm.

11.0 Procurement by Noncompetitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. **GRANTEES MUST OBTAIN PRIOR APPROVAL FROM OCD-DRU PRIOR TO USING THIS PROCUREMENT METHOD.**

1. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
 - a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The awarding agency authorizes noncompetitive proposals; or
 - d. After solicitation of a number of sources, competition is determined inadequate.
2. Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required (See Subsection 7.1.2 above).

12.0 Developing Procedures for When Bids Exceed Cost Estimates.

In some cases the lowest bid received will exceed the amount of funds allocated for the project. When this happens, OCD-DRU should be consulted to determine the best option to proceed. Procedures should be developed to execute the following available options:

1. Reject all bids received
2. Rework the specifications within the bid package
3. Consult with OCD-DRU as to any proposed changes to the plans and/or specifications

4. Once authorized by OCD-DRU, re-advertise the project
5. Make up the difference between the available funds and the amount of the lowest bid through the reallocation of funds
6. Make up the difference between the available funds and the amount of the lowest bid with other sources of funding such as local funds.

Enter into a contract with the low bidder for the amount of the bid and subsequently, execute change orders to bring the project within the allocated funds. See Section 2, Subsection 10.5.4 if this process may result in the execution of change orders.

Note: It is strongly advised that the grantee investigates how exercising this option would affect the other bidders prior to awarding a contract. Since these types of change orders affect the project's scope, they must be reviewed by the OCD-DRU prior to execution.

13.0 Verification of Contractor Eligibility

Grantees must ensure that all contractors receiving Disaster Recovery CDBG funds meet all eligibility requirements. The following steps should be taken to verify and document contractor eligibility for all services procured.

13.1 Prime Contractor Clearance

Prior to the award of a construction contract with a **prime** contractor, the grantee must obtain contractor clearance. To obtain clearance, the following steps should be taken:

1. The grantee should search the following web site:
<https://www.sam.gov/portal/public/SAM/>.
2. The search of the web site only determines whether the contractor is debarred; other types of performance information are not gathered.
3. The grantee must complete the Verification of Contractor Eligibility Form (Exhibit 6-12) and maintain in the project file.

13.2 Professional Consulting and Engineering Firms Clearance

Consulting and/or engineering firms who are either new to a Disaster Recovery CDBG Program or have not performed services associated with a Disaster Recovery CDBG Program within the previous five years must also be cleared. For clearance of professional firms, use Exhibit 6-13.

13.3 Subcontractor Clearance

The OCD-DRU does not clear subcontractors. The grantees must make prime contractors aware that it is their responsibility to verify subcontractor eligibility based on factors such as past performance, a yellow page listing, and proof of liability insurance, possession of a federal ID tax number, debarment, and state licensing requirements. The prime contractor may 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, the OCD-DRU 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 OCD-DRU

14.0 Notice of Contract Award

Once a contractor has been selected using the appropriate solicitation method, the grantee must submit a completed Notice of Contract Award form to the OCD-DRU for all prime contracts. This form must be received by the OCD-DRU within 30 days after award. This form, along with instructions, is provided as Exhibit 6-14. Along with the Notice of Contract Award the grantee must send a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project.

15.0 Preparation of a Contract

Depending on the type procurement used, the grantee should execute the required contract type (see Subsection 7.2 above). Any standard contract shall be modified to include Disaster Recovery CDBG Program requirements. The program requirements are:

1. Construction contracts shall not contain any cost plus or incentive savings provisions. Therefore, the contract shall not make reference to compensation adjustments for cost plus or incentive savings provisions.
2. The method of contracting cannot be cost plus a percentage of cost or a percentage of construction cost. For example, the grantee cannot add a 15% “handling fee” to process an invoice for geotechnical services.
3. For projects implemented utilizing funding from the Hurricane Isaac allocation, Grantees should require the following to be included in project contracts:
 - a. Grantees must incorporate performance requirements and penalties into each procured contract or agreement. Contracts with contractors are procured pursuant to 24 CFR Parts 8 and 85 as applicable or equivalent policies and procedures, but Grantee agreements with subrecipients are not subject to these procurement requirements.
 - b. Grantees are required to ensure all contracts and agreements with subrecipients, recipients, and contractors clearly stipulate the period of performance or date of completion.

The requirements within a contract depend on the type of services provided. The following Subsections provide guidance on these specific requirements for consulting, appraisal, A/E, and construction services. Regardless of the services provided or templates used, all contracts must include all required CDBG Compliance Provisions.

15.1 Consulting and Appraisal Contract Requirements

The grantee must execute its contracts according to the specific project requirements. The sample contracts included as exhibits must be modified to include the specific scope of services procured and required CDBG Compliance Provisions for Professional Services Contracts (see Exhibit 6-16). A sample contract for consulting services is included as Exhibit 6-10. A contract for appraisal services Exhibit 6-15 should be used when executing. See Section 8, Subsection 6.2.2 regarding appraisal services.

15.2 Architectural/Engineering Contract Requirements

The grantee may use the standard A/E contract templates (AIA or EICDS) when executing a contract for professional design services with architectural and engineering firms or other contract. The contract must include all required CDBG Compliance Provisions for Professional Services Contracts (see Exhibit 6-16).

Architectural/ Engineering fees, even those provided under either a fixed price contract or cost reimbursement contract, must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by the OCD-DRU is not adequate. The funds allowed will not exceed those identified in the applicable Application Package. If, after a project has been funded, the scope of the project changes significantly, the OCD-DRU will make a determination of any additional amount that will be allowed. Justification for additional services should be provided to OCD-DRU.

It is understood that the amount of funds available for engineering/architectural services is contingent upon the amount of Disaster Recovery CDBG funds the OCD-DRU allows. The firm will not be compensated from the applicable Disaster Recovery CDBG Program if the project does not receive funding.

The final plans and specifications and cost estimate must be submitted to the OCD-DRU for review prior to advertising for bids.

15.3 Construction Services Contract Requirements

The grantee can use a generic construction contract, but must include the CDBG compliance provisions for construction contracts included in Exhibit 6-2i. A generic construction contract is also included as Exhibit 6-2h.

Firm-fixed-price contracts used to acquire construction may be priced (1) on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work), (2) on a unit-price basis.

Lump-sum pricing shall be used in preference to unit pricing except when:

1. Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;
2. Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;
3. Estimated quantities of work required may change significantly during construction; or
4. Offerors would have to expend unusual effort to develop adequate estimates.

15.3.1 Bonding

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the

awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

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. A sample performance bond is included as Exhibit 6-2f.
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. A sample payment bond is included as Exhibit 6-2g.

The form attached as Exhibit 6-11, can be used to verify the contractor’s bonding arrangement.

16.0 Section 3 of the HUD Act of 1968 Covered Contracts Requirements

Compliance requirements of Section 3 of the HUD Act of 1968 are triggered when a recipient receives in **excess** of \$200,000. If Section 3 of the HUD Act of 1968 is triggered for the grantee, then contractors/subcontractors whose contracts **exceed** \$100,000 must also comply. See Section 8: Civil Rights for additional information regarding Section 3 of the HUD Act of 1968.

17.0 Resources

Exhibit	Description
Exhibit 6-1	Sample Procurement Policy
Exhibit 6-2	Sample Contracts Document Guide
Exhibit 6-3	24 CFR § 570.611 Conflict of Interests
Exhibit 6-4	Cost-Price Detail
Exhibit 6-5	Quick Guide to Cost-Price Analysis
Exhibit 6-6	Sample Advertisement Request for Proposals for Administrative Consulting Services
Exhibit 6-7	Sample Housing Scope of Services
Exhibit 6-8	Instructions for RFP for an Administrative Consultant
Exhibit 6-9	Sample Request For Qualification Statements for a Engineering Service
Exhibit 6-10	Sample Contract for Professional Services
Exhibit 6-11	Bonding Verification
Exhibit 6-12	Verification of Prime Contractor Eligibility
Exhibit 6-13	Sample Verification of Professional Services Eligibility
Exhibit 6-14	Sample Notice of Contract Award

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Exhibit	Description
Exhibit 6-15	Sample Agreement for Appraisal Services (Acquisition)
Exhibit 6-16	CDBG Compliance Provisions for Professional Services Contracts