**ADECA CED Division**

**CDBG-DR Grant Program for Hurricanes Sally and Zeta**

**Procurement Policy**

**Proficient Procurement Processes for CDBG-DR Grant for Hurricanes Sally and Zeta**

Pursuant to the U. S. Department of Housing and Urban Development’s Federal Register Notice of Grant Funds to Address Major Disasters Occurring in 2020 and 2021 (Hurricanes Sally and Zeta in the State of Alabama) published on February 3, 2022 in Volume 87, Number 23 on pages 6364-6392 at Section IV.B. “Procurement,” HUD has stated requirements pertaining to procurement for purposes of administering this grant. This information is at the links <https://www.govinfo.gov/content/pkg/FR-2022-02-03/pdf/2022-02209.pdf> and [2022-02209.pdf (govinfo.gov)](https://www.govinfo.gov/content/pkg/FR-2022-02-03/pdf/2022-02209.pdf). These requirements are stated as follows:

**Federal Register, February 3, 2022, Volume 87, No. 23**

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| **Federal Register, February 3, 2022, Volume 87, No. 23, page 6388:**  *IV.B. Procurement*  For a grantee to have proficient procurement processes, a grantee must: Indicate the procurement standards that apply to its use of CDBG–DR funds; indicate the procurement standards for subrecipients or local governments as applicable; comply with the standards it certified to HUD that it follows (and update the certification submissions when substantial changes are made); post the required documentation to the official website as described below; and include periods of performance and date of completion in all CDBG–DR contracts.  State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and the following alternative requirements: The grantee must evaluate the cost or price of the product or service being procured. State grantees shall establish requirements for procurement processes for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require a local government or subrecipient to evaluate the cost or price of the product or service being procured with CDBG–DR funds. Additionally, if the state agency designated as the administering agency chooses to provide funding to another state agency, the administering agency must specify in its procurement processes whether the agency implementing the CDBG–DR activity must follow the procurement processes that the administering agency is subject to, or whether the agency must follow the same processes to which other local governments and subrecipients are subject, or its own procurement processes.  A grantee shall administer CDBG–DR grant funds in accordance with all applicable laws and regulations. As an alternative requirement, grantees may not delegate, by contract, or otherwise, the responsibility for administering such grant funds.  HUD is establishing an additional alternative requirement for all contracts with contractors used to provide goods and services, as follows:  1. The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;  2. The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages but must incorporate performance requirements; and  3. The grantee (or procuring entity) may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management. |

In compliance with *Section IV.B. Procurement* stated above, ADECA, as the grantee of CDBG-DR Grant Funds for Hurricanes Sally and Zeta, herein below:

● indicates the procurement standards that apply to ADECA’s use of these CDBG–DR funds,

● indicates the procurement standards for subrecipients or local governments as applicable;

● indicates that ADECA will comply with the standards ADECA certified to HUD that ADECA follows,

● indicates that ADECA will update the certification submissions when substantial changes are made,

● indicates that ADECA will post the required documentation to the official website as described below,

● indicates that ADECA will include periods of performance and date of completion in all CDBG–DR contracts, and

● indicates that ADECA will comply with 24 CFR §570.489(g) and HUD’s alternative requirements.

**Adoption of 2 CFR §200.317-327 Procurement Standards as Applicable to ADECA’s Use of CDBG-DR Funds**

Pursuant to Section IV.B. “Procurement” of the Federal Register Notice [also at Section III.A.1.a.(2)(a)(i) of the Federal Register Notice], ADECA hereby adopts the procurement standards published in the *Code of Federal Regulations* at 2 CFR §200.317 through 2 CFR §200.327, as the procurement policy for administering the CDBG-DR Grant Program for Hurricanes Sally and Zeta. ADECA hereby shows that, as the grantee for the CDBG-DR Grant Program for Hurricanes Sally and Zeta, ADECA has adopted these procurement standards that uphold the principles of full and open competition and will evaluate the cost or price of products or services. Thus, ADECA's procurement processes comply with other procurement requirements described in the Federal Register Notice at Section IV.B. “Procurement” (stated herein above).

**Adoption of 2 CFR §200.317-327 Procurement Standards as Applicable to ADECA’s Subrecipients or Local Governments**

The ADECA CED Division hereby adopts the procurement standards published in the *Code of Federal Regulations* at 2 CFR §200.317 through 2 CFR §200.327 as the procurement standards that will be applicable to ADECA’s subrecipients and/or units of local government who are recipients of CDBG-DR Grant Program funds for Hurricanes Sally and Zeta. ADECA has adopted these procurement standards so that the subrecipients / local governments will uphold the principles of full and open competition at the subrecipient / local government level, and so that the subrecipients / local governments will evaluate the cost or price of products or services at the local level.

These CFR sections are posted online at the links <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.317> through <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.327>. These CFR sections state as follows:

**2 CFR §200.317 through 2 CFR §200.327**

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| **2 CFR §**[**200.317 Procurements by states.**](https://www.ecfr.gov/current/title-2/section-200.318)  When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with [§§ 200.321](https://www.ecfr.gov/current/title-2/section-200.321), [200.322](https://www.ecfr.gov/current/title-2/section-200.322), and [200.323](https://www.ecfr.gov/current/title-2/section-200.323) and ensure that every purchase order or other contract includes any clauses required by [§ 200.327](https://www.ecfr.gov/current/title-2/section-200.327). All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in [§§ 200.318](https://www.ecfr.gov/current/title-2/section-200.318) through [200.327](https://www.ecfr.gov/current/title-2/section-200.327).  **2 CFR §**[**200.318 General procurement standards.**](https://www.ecfr.gov/current/title-2/section-200.318)  (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](https://www.ecfr.gov/current/title-2/section-200.317) through [200.327](https://www.ecfr.gov/current/title-2/section-200.327).  (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.  (c)  (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.  (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.  (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.  (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.  (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.  (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.  (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](https://www.ecfr.gov/current/title-2/section-200.214).  (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.  (j)  (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:  (i) The actual cost of materials; and  (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.  (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.  (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. **2 CFR** [**§ 200.319 Competition.**](https://www.ecfr.gov/current/title-2/section-200.319) (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](https://www.ecfr.gov/current/title-2/section-200.320).  (b) In order 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 in order for them 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.  (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in 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.  (d) The non-Federal entity must have written procedures for procurement transactions. 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. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and  (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.  (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.  (f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320(c)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(c)). **2 CFR** [**§ 200.320 Methods of procurement to be followed.**](https://www.ecfr.gov/current/title-2/section-200.320) The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](https://www.ecfr.gov/current/title-2/section-200.317), [200.318](https://www.ecfr.gov/current/title-2/section-200.318), and [200.319](https://www.ecfr.gov/current/title-2/section-200.319) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.  (a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in [§ 200.1](https://www.ecfr.gov/current/title-2/section-200.1), or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:  (1) **Micro-purchases** -  (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in [§ 200.1](https://www.ecfr.gov/current/title-2/section-200.1)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.  (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.  (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs (a)(1)(iv)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(iv)) and [(v)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(v)) of this section.  (iv) **Non-Federal entity increase to the micro-purchase threshold up to $50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](https://www.ecfr.gov/current/title-2/section-200.334). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:  (A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](https://www.ecfr.gov/current/title-2/section-200.520) for the most recent audit;  (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,  (C) For public institutions, a higher threshold consistent with State law.  (v) **Non-Federal entity increase to the micro-purchase threshold over $50,000.** Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph (a)(1)(iv)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)(iv)) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.  (2) **Small purchases** -  (i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.  (ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.  (b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](https://www.ecfr.gov/current/title-2/section-200.319) or [paragraph (c)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(c)) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:  (1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.  (i) In order for sealed bidding to be feasible, the following conditions should be present:  (A) A complete, adequate, and realistic specification or purchase description is available;  (B) Two or more responsible bidders are willing and able to compete effectively for the business; and  (C) 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.  (ii) If sealed bids are used, the following requirements apply:  (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;  (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;  (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;  (D) 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 must 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  (E) Any or all bids may be rejected if there is a sound documented reason.  (2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:  (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;  (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;  (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and  (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.  (c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:  (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph (a)(1)](https://www.ecfr.gov/current/title-2/section-200.320#p-200.320(a)(1)) of this section);  (2) The item is available only from a single source;  (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;  (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or  (5) After solicitation of a number of sources, competition is determined inadequate. **2 CFR** [**§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**](https://www.ecfr.gov/current/title-2/section-200.321) (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.  (b) Affirmative steps must include:  (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;  (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;  (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;  (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;  (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and  (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs (b)(1)](https://www.ecfr.gov/current/title-2/section-200.321#p-200.321(b)(1)) through [(5)](https://www.ecfr.gov/current/title-2/section-200.321#p-200.321(b)(5)) of this section. **2 CFR** [**§ 200.322 Domestic preferences for procurements.**](https://www.ecfr.gov/current/title-2/section-200.322) (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.  (b) For purposes of this section:  (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.  (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. **2 CFR** [**§ 200.323 Procurement of recovered materials.**](https://www.ecfr.gov/current/title-2/section-200.323) A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](https://www.ecfr.gov/current/title-40/part-247) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. **2 CFR** [**§ 200.324 Contract cost and price.**](https://www.ecfr.gov/current/title-2/section-200.324) (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.  (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.  (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under [subpart E of this part](https://www.ecfr.gov/current/title-2/part-200/subpart-E). The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.  (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. **2 CFR** [**§ 200.325 Federal awarding agency or pass-through entity review.**](https://www.ecfr.gov/current/title-2/section-200.325) (a) The non-Federal entity 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 will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.  (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:  (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;  (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;  (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;  (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or  (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.  (c) The non-Federal entity is exempt from the pre-procurement review in [paragraph (b)](https://www.ecfr.gov/current/title-2/section-200.325#p-200.325(b)) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.  (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;  (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review. **2 CFR** [**§ 200.326 Bonding requirements.**](https://www.ecfr.gov/current/title-2/section-200.326) For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:  (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must 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 the bid, execute such 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 requirements 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. **2 CFR** [**§ 200.327 Contract provisions.**](https://www.ecfr.gov/current/title-2/section-200.327) The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.  **2 CFR Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**  In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.  **(A)** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](https://www.law.cornell.edu/uscode/text/41/1908), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.  **(B)** All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.  **(C)** Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](https://www.law.cornell.edu/cfr/text/41/part-60), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1](https://www.law.cornell.edu/cfr/text/41/part-60-1).3 must include the equal opportunity clause provided under [41](https://www.law.cornell.edu/cfr/text/41) CFR 60-1.4(b), in accordance with [Executive Order 11246](https://www.govinfo.gov/link/cpd/executiveorder/11246), “Equal Employment Opportunity” ([30 FR 12319](https://www.law.cornell.edu/rio/citation/30_FR_12319), 12935, [3](https://www.law.cornell.edu/cfr/text/3) CFR Part, 1964-1965 Comp., p. 339), as amended by [Executive Order 11375](https://www.govinfo.gov/link/cpd/executiveorder/11375), “Amending [Executive Order 11246](https://www.govinfo.gov/link/cpd/executiveorder/11246) Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](https://www.law.cornell.edu/cfr/text/41/part-60), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”  **(D)** [Davis-Bacon Act](https://www.law.cornell.edu/topn/bacon-davis_act), as amended ([40](https://www.law.cornell.edu/uscode/text/40) U.S.C. [3141](https://www.law.cornell.edu/uscode/text/40/3141)-[3148](https://www.law.cornell.edu/uscode/text/40/3148)). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the [Davis-Bacon Act](https://www.law.cornell.edu/topn/bacon-davis_act) ([40](https://www.law.cornell.edu/uscode/text/40) U.S.C. [3141](https://www.law.cornell.edu/uscode/text/40/3141)-[3144](https://www.law.cornell.edu/uscode/text/40/3144), and [3146](https://www.law.cornell.edu/uscode/text/40/3146)-[3148](https://www.law.cornell.edu/uscode/text/40/3148)) as supplemented by Department of Labor regulations ([29 CFR Part 5](https://www.law.cornell.edu/cfr/text/29/part-5), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](https://www.law.cornell.edu/uscode/text/40/3145)), as supplemented by Department of Labor regulations ([29 CFR Part 3](https://www.law.cornell.edu/cfr/text/29/part-3), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.  **(E)** [Contract Work Hours and Safety Standards Act](https://www.law.cornell.edu/topn/contract_work_hours_and_safety_standards_act) ([40](https://www.law.cornell.edu/uscode/text/40) U.S.C. [3701](https://www.law.cornell.edu/uscode/text/40/3701)-[3708](https://www.law.cornell.edu/uscode/text/40/3708)). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40](https://www.law.cornell.edu/uscode/text/40) U.S.C. [3702](https://www.law.cornell.edu/uscode/text/40/3702) and [3704](https://www.law.cornell.edu/uscode/text/40/3704), as supplemented by Department of Labor regulations ([29 CFR Part 5](https://www.law.cornell.edu/cfr/text/29/part-5)). Under [40 U.S.C. 3702](https://www.law.cornell.edu/uscode/text/40/3702) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](https://www.law.cornell.edu/uscode/text/40/3704) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.  **(F)** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2](https://www.law.cornell.edu/cfr/text/37/401.2) (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](https://www.law.cornell.edu/cfr/text/37/part-401), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.  **(G)** [Clean Air Act](https://www.law.cornell.edu/topn/air_pollution_control_act) ([42](https://www.law.cornell.edu/uscode/text/42) U.S.C. [7401](https://www.law.cornell.edu/uscode/text/42/7401)-[7671q](https://www.law.cornell.edu/uscode/text/42/7671q).) and the [Federal Water Pollution Control Act](https://www.law.cornell.edu/topn/clean_water_act) ([33](https://www.law.cornell.edu/uscode/text/33) U.S.C. [1251](https://www.law.cornell.edu/uscode/text/33/1251)-[1387](https://www.law.cornell.edu/uscode/text/33/1387)), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the [Clean Air Act](https://www.law.cornell.edu/topn/air_pollution_control_act) ([42](https://www.law.cornell.edu/uscode/text/42) U.S.C. [7401](https://www.law.cornell.edu/uscode/text/42/7401)-[7671q](https://www.law.cornell.edu/uscode/text/42/7671q)) and the [Federal Water Pollution Control Act](https://www.law.cornell.edu/topn/clean_water_act) as amended ([33](https://www.law.cornell.edu/uscode/text/33) U.S.C. [1251](https://www.law.cornell.edu/uscode/text/33/1251)-[1387](https://www.law.cornell.edu/uscode/text/33/1387)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).  **(H)** Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](https://www.law.cornell.edu/cfr/text/2/180.220)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2](https://www.law.cornell.edu/cfr/text/2) CFR 180 that implement Executive Orders 12549 ([3 CFR part 1986](https://www.law.cornell.edu/cfr/text/3/part-1986) Comp., p. 189) and 12689 ([3 CFR part 1989](https://www.law.cornell.edu/cfr/text/3/part-1989) Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](https://www.govinfo.gov/link/cpd/executiveorder/12549).  **(I)** Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](https://www.law.cornell.edu/uscode/text/31/1352)) - Contractors that apply or bid for an award exceeding $100,000 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, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](https://www.law.cornell.edu/uscode/text/31/1352). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.  **(J)** See [§ 200.323](https://www.law.cornell.edu/cfr/text/2/200.323).  **(K)** See [§ 200.216](https://www.law.cornell.edu/cfr/text/2/200.216).  **(L)** See [§ 200.322](https://www.law.cornell.edu/cfr/text/2/200.322).  [See [78 FR 78608](https://www.law.cornell.edu/rio/citation/78_FR_78608), Dec. 26, 2013, as amended at [79 FR 75888](https://www.law.cornell.edu/rio/citation/79_FR_75888), Dec. 19, 2014; [85 FR 49577](https://www.law.cornell.edu/rio/citation/85_FR_49577), Aug. 13, 2020.] |

**Adoption of 2 CFR §200.403-405 General Cost Principles**

The ADECA CED Division hereby adopts as part of these procurement standards the General Cost Principles published in the *Code of Federal Regulations* at 2 CFR §200.403 through 2 CFR §200.405 as part of the procurement standards that will be applicable to ADECA and its subrecipients and/or units of local government who are recipients of CDBG-DR Grant Program funds for Hurricanes Sally and Zeta. ADECA has adopted these general cost principles so that ADECA and the subrecipients / local governments will uphold the principles of full and open competition at the state and the subrecipient / local government levels, and so that the state and the subrecipients / local governments will evaluate the cost or price of products or services at the state and local levels.

These CFR sections are posted online at the links <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E/subject-group-ECFRea20080eff2ea53/section-200.403> through <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E/subject-group-ECFRea20080eff2ea53/section-200.405>. These CFR sections state as follows:

**2 CFR §200.403 through 2 CFR §200.405**

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| **2 CFR** [**§ 200.403 Factors affecting allowability of costs.**](https://www.ecfr.gov/current/title-2/section-200.403)  Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:  (a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.  (b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.  (c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.  (d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.  (e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.  (f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also [§ 200.306(b)](https://www.ecfr.gov/current/title-2/section-200.306#p-200.306(b)).  (g) Be adequately documented. See also [§§ 200.300](https://www.ecfr.gov/current/title-2/part-200/section-200.300) through [200.309 of this part](https://www.ecfr.gov/current/title-2/part-200/section-200.309).  (h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to [§ 200.308(e)(3)](https://www.ecfr.gov/current/title-2/section-200.308#p-200.308(e)(3)).  [See [78 FR 78608](https://www.federalregister.gov/citation/78-FR-78608), Dec. 26, 2013, as amended at [85 FR 49562](https://www.federalregister.gov/citation/85-FR-49562), Aug. 13, 2020.] **2 CFR** [**§ 200.404 Reasonable costs.**](https://www.ecfr.gov/current/title-2/section-200.404) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:  (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.  (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.  (c) Market prices for comparable goods or services for the geographic area.  (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.  (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.  [See [78 FR 78608](https://www.federalregister.gov/citation/78-FR-78608), Dec. 26, 2013, as amended at [79 FR 75885](https://www.federalregister.gov/citation/79-FR-75885), Dec. 19, 2014.] **2 CFR** [**§ 200.405 Allocable costs.**](https://www.ecfr.gov/current/title-2/section-200.405) (a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:  (1) Is incurred specifically for the Federal award;  (2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and  (3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.  (b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.  (c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.  (d) Direct cost allocation principles: If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding [paragraph (c)](https://www.ecfr.gov/current/title-2/section-200.405#p-200.405(c)) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also [§§ 200.310](https://www.ecfr.gov/current/title-2/section-200.310) through [200.316](https://www.ecfr.gov/current/title-2/section-200.316) and [200.439](https://www.ecfr.gov/current/title-2/section-200.439).  (e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.  [See [78 FR 78608](https://www.federalregister.gov/citation/78-FR-78608), Dec. 26, 2013, as amended at [79 FR 75885](https://www.federalregister.gov/citation/79-FR-75885), Dec. 19, 2014; [85 FR 49562](https://www.federalregister.gov/citation/85-FR-49562), Aug. 13, 2020.] |

HUD has also developed a resource tool entitled *Buying Right CDBG-DR and Procurement: A Guide to Recovery* published in September 2017 at the links <https://www.hudexchange.info/resource/5614/buying-right-cdbg-dr-and-procurement-a-guide-to-recovery/> and <https://files.hudexchange.info/resources/documents/Buying-Right-CDBG-DR-and-Procurement-A-Guide-to-Recovery.pdf>. This Guide is for use by CDBG-DR state grantees and their subrecipients who will be procuring goods and services with their grant funds, wherein they must ensure that they are following all program procurement statutory and regulatory requirements. This Guide provides guidance to CDBG-DR state grantees and their subrecipients on how to comply with procurement requirements while also moving as quickly as possible to recover from a disaster.

By adopting 2 CFR [§200.317 through §200-327](https://www.ecfr.gov/current/title-2/section-200.327) and 2 CFR [§200.403 through §200-405](https://www.ecfr.gov/current/title-2/section-200.327), and by following this Guide, ADECA’s procurement processes comply with other procurement requirements described in the February 3, 2022 Federal Register Notice (pages 6364-6392) at Section IV.B. “Procurement” on page 6388 (stated above). Section IV.B. “Procurement” is posted online at the links <https://www.govinfo.gov/content/pkg/FR-2022-02-03/pdf-2022-02209.pdf> and [2022-02209.pdf (govinfo.gov)](https://www.govinfo.gov/content/pkg/FR-2022-02-03/pdf/2022-02209.pdf). These requirements include:

ADECA’s Implementation Plan for the CDBG-DR Grant for Hurricanes Sally and Zeta shall indicate: (1) that the ADECA CED Division’s Statewide Initiatives Unit – or such other unit to be designated by the ADECA CED Division Chief – shall be responsible for CDBG-DR procurement, and (2) the contact information for that designated Unit will be included in that Implementation Plan.

## ADECA hereby states that the ADECA CED Division’s Statewide Initiatives Unit – or such other unit to be designated by the ADECA CED Division Chief – shall be responsible for CDBG-DR procurement. Additionally, the contact information is as follows:

Alabama Department of Economic and Community Affairs (ADECA)

Community and Economic Development Division (CED Division)

401 Adams Avenue, Room 500; Post Office Box 5690

Montgomery, Alabama 36103-5690

Attention: Mr. Shabbir Olia, CED Division Chief

Phone # 334-242-5468; Fax#: 334-353-3527; Email: [Shabbir.oila@adeca.alabama.gov](mailto:Shabbir.oila@adeca.alabama.gov)

Additionally, see below and the ADECA website [www.adeca.alabama.gov](http://www.adeca.alabama.gov) at the link <https://adeca.alabama.gov/cdbg/monitoring-and-compliance-checklists/> for the ADECA CDBG Program's procurement Bidding and Contracting Compliance Questionnaire and its Attachments A and B, that each subgrant recipient must complete prior to receiving ADECA’s CDBG grant funds.

**Bidding and Contracting Compliance Questionnaire**

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| **LETTER OF CONDITIONAL COMMITMENT**  **BIDDING AND CONTRACTING COMPLIANCE QUESTIONNAIRE**  Grantee Name:  Project Number:  **PART A: STANDARDS OF CONDUCT**   1. Does the grantee maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts? (Please see attachment A.) Yes \_\_\_\_\_\_\_ No \_\_\_\_\_\_\_ 2. Date the standards were adopted: \_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_   (Month) (Day) (Year)  **PART B: PROCUREMENT PROCEDURES**   1. Does the grantee have written Procurement Policies? (Please see attachment B.) Yes \_\_\_\_\_\_\_ No \_\_\_\_\_\_\_ 2. Date Procurement Policies were adopted: \_\_\_\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_/\_\_\_\_\_\_\_\_\_\_   (Month) (Day) (Year)   1. Has the grantee included the State of Alabama Public Works Law (Title 39, Code of Alabama), the State of Alabama Competitive Bid Law (Title 41, Code of Alabama, as amended), and the Common Rule (24 CFR 85.36) in its procurement policies? Yes \_\_\_\_ No \_\_\_\_ 2. Has the grantee identified a purchasing coordinator to implement its procurement procedures? Yes \_\_\_\_\_ No \_\_\_\_\_   **PART C: CERTIFICATION**  A copy of the adopted Standards of Conduct and Procurement Policies is on file and available for review at the town hall/county commission.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Mayor/Chairman Date ADECA Reviewer Date  **NOTE: Please complete, sign, date, and return this page to ADECA. Attachments A and B are provided as program management tools; please do not be return them to ADECA.** |

**Bidding and Contracting Compliance Questionnaire Attachments A and B**

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| **Attachment A**  **Sample Language for Standards of Conduct**  No employee, officer, or agent of the {Community Name} 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, would be involved (such a conflict would arise when: the employee, officer, or agent; or any member of his immediate family, his partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.  The officers, employees, or agents of the {Community Name}, will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. (The {Community Name} may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.)  To the extent permitted by state (Title 36, Chapter 25, Alabama Code) or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the officers or employees of the {Community Name}, or agents, or by contractors or their agents.  **Attachment B**  **Sample Language for Methods of Procurement**  The {Community Name}, will follow the procurement methods described below and will ensure that all contracts will be in writing, include the appropriate state, federal, and local clauses, and that all contracts will be authorized by the {Community’s Elected Body}. The {Community Name} has identified {Procurement Officer} as the person with the authority to initiate purchase requests and enter into contracts. Further, the {Community Name} will ensure that the procurement of labor, services, or materials will be conducted in accordance with these local written procedures that conform to 24 CFR 85.36 (Common Rule), Title 41, Code of Alabama (Bid Law), and Title 39, Code of Alabama (Public Works Law). All procurement follows one of the following methods:   1. Small Purchase 2. See State Bid Law (Title 41, Code of Alabama) Common Rule (24CFR85.36),    1. Price or rate quotations for purchases or contracts with an aggregate cost $15,000 or less must be obtained from at least three (3) qualified sources. (No purchase or contract involving an amount in excess of $15,000 shall be divided into parts involving amounts $15,000 or less for the purpose of avoiding the requirements of the Bid Law.) File documentation is required. 3. See Public Works Law (Title 39, Code of Alabama) and Common Rule (24CFR85.36), 4. Price or rate quotations for professional services with an aggregate cost of $100,000 or less must be obtained from at least three (3) qualified sources. File documentation and contract for professional services are required. 5. Contracts for public works involving $50,000 or less may be let without advertising or sealed bids. Price or rate quotations must be obtained from at least three (3) sources. (No public work involving a sum in excess of $50,000 shall be split into parts involving sums of $50,000 or less for the purposes of evading the Public Works Law.) File documentation is required. 6. Sealed Bids    1. See State Bid Law (Title 41, Code of Alabama),   1. All purchases in excess of $15,000 shall be advertised by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for any length of time as may be determined. Sealed bids shall also be solicited by sending notice by mail or other electronic means to all persons, firms, or corporations who have filed a request in writing that they be listed for solicitation on bids for the particular items that are set forth in the request. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice.  2. All original bids together with all documents pertaining to the award of the contract shall be retained in accordance with a retention period of at least seven years established by the Local Government Records Commission and shall be open to public inspection.   * 1. See Public Works Law (Title 39, Code of Alabama),  1. Definition of Public Works: The construction, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise. 2. Before entering into any contract for a public works involving an amount in excess of $50,000, the awarding authority shall advertise for sealed bids. If the awarding authority is the state or a county, or an instrumentality thereof, it shall advertise for sealed bids at least once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the improvement or some part thereof, is to be made. If the awarding authority is a municipality, or an instrumentality thereof, it shall advertise for sealed bids at least once in a newspaper of general circulation published in the municipality where the awarding authority is located. If no newspaper is published in the municipality, the awarding authority shall advertise by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for the length of time as may be determined. In addition to bulletin board notice, sealed bids shall also be solicited by sending notice by mail to all persons who have filed a request in writing with the official designated by the awarding authority that they be listed for solicitation on bids for the public works contracts indicated in the request. For all public works contracts involving an estimated amount in excess of $500,000, awarding authorities shall also advertise for sealed bids at least once in three newspapers of general circulation throughout the state. 3. The advertisements shall briefly describe the improvement, state that plans and specifications for the improvement are on file for examination in a designated office of the awarding authority, state the procedure for obtaining plans and specifications, state the time and place in which bids shall be received and opened, and identify whether prequalification is required and where all written prequalification information is available for review. All bids shall be opened publicly at the advertised time and place. 4. Competitive Negotiations   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. See Common Rule (24CFR85.36)     2. Requests for proposals will be publicized and identify all evaluation factors and their relative importance.     3. Proposals will be solicited from an adequate number of qualified sources.     4. Grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees.     5. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.     6. Grantees 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. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.  1. Noncompetitive Negotiations   Procurement by noncompetitive proposals or “sole source” is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. 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: the item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the awarding agency authorizes noncompetitive proposals; and after solicitation of a number of sources, competition is determined inadequate.   1. Proper documentation that one or more of the above circumstances existed. 2. There is no conflict of interest by the parties involved. 3. 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.   5. Price/Cost Analysis  Grantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.   1. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. 2. 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 on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. 3. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price. 4. Grantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. 5. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. 6. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles. 7. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. |

Also, pursuant to the ADECA CDBG Program’s compliance monitoring procedures (posted online on the ADECA website [www.adeca.alabama.gov](http://www.adeca.alabama.gov) at the link <https://adeca.alabama.gov/compliance-plans/>) and accompanying compliance monitoring checklists (also posted online on the ADECA website at the link <https://adeca.alabama.gov/cdbg/monitoring-and-compliance-checklists/>), these procedures and checklists will be utilized to monitor the CDBG-DR Grant Program for Hurricanes Sally and Zeta subgrant recipients for compliance with procurement. See below and the ADECA website ([www.adeca.alabama.gov](http://www.adeca.alabama.gov)) at the link <https://adeca.alabama.gov/cdbg/monitoring-and-compliance-checklists/> for the ADECA CDBG Program’s

(i) Professional Services Contracts Monitoring Checklist,

(ii) Bidding and Contracting – Construction Monitoring Checklist, and

(iii) Bidding and Contracting – Other Procurement Methods Monitoring Checklist.

These checklists follow the ADECA CDBG Program’s compliance monitoring procedures.

**Professional Services Contracts Monitoring Checklist**

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| |  |  | | --- | --- | | Grantee Name |  | | Project No. |  | | Preparer |  | | Date Prepared |  | | Follow-up Review Indicated |  |  Professional Services Contracts Compliance Checklist (Engineering/Architecture, Administration, Appraisals, Legal, and Audit) **I. Preagreement Costs**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | | A. | Were preagreement costs identified in the application and approved budget?  If so, list each cost item and the amount paid from grant/match funds: |  |  |  |  | | B. | Was a separate procurement process used (RFP or small purchase procedures) and contract awarded for application preparation? |  |  |  |  | | C. | Were all payments associated with approved preagreement costs properly documented and invoiced? |  |  |  |  |   **II. Post Award Professional Services**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | A. | Were all contracts properly executed? |  |  |  |  | | B. | Were all services properly procured? (Request for Proposals or small purchase procedures if less than or equal to $100,000) |  |  |  |  | |  | * Do services provided in contracts coincide with those advertised? |  |  |  |  | |  | * Were services advertised and solicited from an adequate number of providers? |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | |  | * Were RFP’s evaluated consistently with published system? |  |  |  |  | | C. | Was price part of RFP? If no, is there a cost/price analysis and/or do costs fall within accepted industry standards? |  |  |  |  | | D. | Was debarred status verified? |  |  |  |  | | E. | Are contracts dated after the effective date of the State’s Grant Agreement? |  |  |  |  | | F. | Are contract services provided on a fixed fee basis rather than a percentage? |  |  |  |  | | G. | Do contracts include required CDBG clauses? |  |  |  |  | |  | * Termination for cause/breach of contract. |  |  |  |  | |  | * Termination for convenience. |  |  |  |  | |  | * Audits and inspection, access to records, and five year records retention clause. |  |  |  |  | |  | * Title VI, Civil Rights Act of 1964. |  |  |  |  | |  | * Section 109, H&CD Act of 1974. |  |  |  |  | |  | * Conflict of interest. |  |  |  |  | |  | * Section 504 Rehabilitation Act of 1973. |  |  |  |  | |  | * Age Discrimination Act of 1975. |  |  |  |  | |  | * “Section 3” Compliance. |  |  |  |  | |  | * Section 3 Plan. |  |  |  |  | |  | * Executive Order 11246 and E.O. clause (for contractors with more than 50 employees and contracts over $10,000). |  |  |  |  | |  | * Section 402 of the 1974 Vietnam Veterans Act ($10,000 or more). |  |  |  |  | | H. | Was the Beason-Hammon Clause included in each of the contracts? (Any contract or amendment with an effective date of 4/1/12 or later.) |  |  |  |  | | I. | Did the grantee maintain a copy of the Certification of Compliance with the Beason-Hammon Act and the E-Verify MOU for each of the contracts in the CDBG Program Files? (Any contract or amendment with an effective date of 4/1/12 or later.) |  |  |  |  | |

**Bidding and Contracting – Construction Monitoring Checklist**

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| |  |  | | --- | --- | | Grantee Name |  | | Project No. |  | | Preparer |  | | Date Prepared |  | | Follow-up Review Indicated |  |  Bidding and Contracting Construction Compliance Checklist **I. Bidding Procedures**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | | A. | Did grantee use competitive sealed bids for projects exceeding $50,000? If no, please see the Other Procurement Methods checklist. |  |  |  |  | |  | * Was project advertised? |  |  |  |  | |  | * If by county, once a week for 3 weeks in a newspaper of general circulation published in that county. |  |  |  |  | |  | * If by municipality, once in a newspaper of general circulation published in that municipality (can be posted if no local newspaper). |  |  |  |  | |  | * If over $500,000, was it advertised additionally in 3 newspapers of general circulation throughout the State? |  |  |  |  | |  | * The project was not advertised; if yes, please see the Other Procurement Methods checklist: |  |  |  |  | |  | * Did all bids on projects over $50,000 include a State License number on the outside of the bid? |  |  |  |  | |  | * Were bids opened publicly? |  |  |  |  | |  | * Are there minutes to the bid opening? |  |  |  |  | |  | * Was the lowest bid accepted? |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | |  | * If not, was the rejection based on sound reasons? |  |  |  |  | |  | * Did the grantee utilize a local preference zone? (Not allowed with federal funds.) |  |  |  |  |   **II. Bonding, Insurance, and Contract Requirements**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | A. | Were contracts properly executed? |  |  |  |  | | B. | Were contracts entered into after the Removal of Grant Conditions? |  |  |  |  | | C. | How was the contract price determined (lump sum, unit price, etc.)? |  |  |  |  | | D. | For construction contracts for public works projects has the grantee obtained: |  |  |  |  | |  | * A bid guarantee of 5%. |  |  |  |  | |  | * A performance bond from the contractor for 100% of the contract price? |  |  |  |  | |  | A payment bond from the contractor:   * 50% for contracts under $100,000 * 100% for contracts $100,000 or over |  |  |  |  | |  | * Evidence of insurance as required by bid documents? |  |  |  |  | | E. | For contracts $100,000 or over, were the bid documents and contract awards processes certified to by the grantee’s attorney? |  |  |  |  | | F. | Was the Beason-Hammon Clause included in the contract? (Any contract or amendment with an effective date of 4/1/12 or later.) |  |  |  |  | | G. | Did the grantee maintain a copy of the Certification of Compliance with the Beason-Hammon Act and the E-Verify MOU in the CDBG Program Files? (Any contract or amendment with an effective date of 4/1/12 or later.) |  |  |  |  |   **III. General Conditions**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | | A. | Does the contract require the contractors to keep all records for five years and to provide access to records? |  |  |  |  | | B. | Does the contract provide for legal remedies for breach of contract by the contractor? |  |  |  |  | | C. | Does the contract provide a termination clause for the grantee stating conditions under which this can happen in contracts over $10,000? |  |  |  |  | | D. | Is there any evidence of conflict of interest between the parties involved? |  |  |  |  | | E. | Were all required labor standards provisions included in bid specifications and contracts? (HUD 4010 or comparable language.) |  |  |  |  |   **IV. Supplemental General Conditions**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | A. | Did the contract include clauses for compliance with Executive Order 11246 or E.O. clause? |  |  |  |  | | B. | Were goals for minority and female participation stated? |  |  |  |  | | C. | Did the contract include a Certification of Non-segregated Facilities? |  |  |  |  | | D. | Did contract include clauses for compliance with Title VI, Civil Rights Act of 1964 and Section 109 of the H&CD Act of 1974? |  |  |  |  | | E. | Was certification to “Section 3” compliance included? |  |  |  |  | | F. | Was there a clause for compliance to Section 504 of the Rehabilitation Act of 1973 ($2,500 or more)? |  |  |  |  | | G. | Is there a clause for compliance with Section 402 of the 1974 Vietnam Veterans Act ($10,000 or more)? |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | | H. | Is there a clause for compliance with the Age Discrimination Act of 1975 ($2,000 or more)? |  |  |  |  | | I. | Is there a clause for compliance with the Clean Air Act, Clean Water Act, and EPA regulations in all contracts over $100,000? |  |  |  |  | | J. | Were wage rates included in the solicitation of bid specifications? |  |  |  |  |   **V. Change Orders**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  |  |  |  |  | | A. | Is the final contract amount different from the award price due to change orders? |  |  |  |  | |  | * Do cumulative changes result in less than a ten percent increase in the contract award price? |  |  |  |  | |  | * Do change orders pertain to minor changes consistent with the general scope of the original project? |  |  |  |  | |  | * If cumulative changes exceed ten percent, are contract items and unit costs consistent with the original contract? |  |  |  |  | |  | * If the answers to all of the above are no, then are the changes necessitated by extraordinary circumstances that have been documented by the architect and/or engineer? |  |  |  |  | | B. | Have all contract change orders been approved by the local governing body? |  |  |  |  | | C. | For projects from 2009 or later, were all change orders approved by ADECA’s Engineer? |  |  |  |  |   **VI. Hook Ups**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | | A. | If hookups were a requirement of the project, is there a construction contract with the community to provide all documented hookups, or are there individual rehabilitation contracts for all documented hookups? |  |  |  |  | | B. | Is there sufficient documentation for all LMI households not being hooked up? |  |  |  |  | | C. | Does number being hooked up correspond to approved application and contracts? If so, how many have been completed to date?\_\_\_\_\_\_\_\_\_\_ |  |  |  |  | | D. | Are there temporary easements/rights of entry for each household that is being hooked up? |  |  |  |  | | E. | How is household income documented for households being hooked up? |  |  |  |  | | F. | Did a Licensed Plumber or a Certified Inspector approve the connections? |  |  |  |  | |

**Bidding and Contracting – Other Procurement Methods Monitoring Checklist**

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| |  |  | | --- | --- | | Grantee Name |  | | Project No. |  | | Preparer |  | | Date Prepared |  | | Follow-up Review Indicated |  |  Bidding and Contracting - Other Procurement Methods  1. **Small Purchase Procedures**  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | | A. | Did grantee use procurement by small purchase procedures? |  |  |  |  | |  | * Was the purchase amount $15,000 or less for purchases covered by the Alabama Bid Law, or $50,000 or less for purchases covered by the Alabama Public Works Law? |  |  |  |  | |  | * Did the grantee follow their written procurement procedures? |  |  |  |  | |  | * Were price or rate quotations obtained from an adequate number of qualified sources? |  |  |  |  | |  | * List sources. |  |  |  |  | |  | * Was the low bidder selected? |  |  |  |  | |  | * Was a purchase order issued? If no, please see part III below. |  |  |  |  |  1. **Sole Source Procurement and/or Emergency Procurement**  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | B. | Did grantee use procurement by noncompetitive proposals (sole source) |  |  |  |  | |  | * Did the grantee follow their written procurement procedures? |  |  |  |  | |  | * Was the award of the contract infeasible under small purchase procedures, sealed bids? |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | |  | * Is there adequate documentation that the item or service was only available from a single source? |  |  |  |  | |  | * Is there adequate documentation that the public exigency or emergency was such that the requirement would not permit a delay resulting from competitive solicitation? |  |  |  |  | |  | * Is there adequate documentation that competition was considered inadequate after solicitation of a number of sources? |  |  |  |  | |  | * In the case of a negotiated price, was the price negotiated lower than any previously received bids? |  |  |  |  | |  | * Was a purchase order issued? If no, please see part III below. |  |  |  |  |  1. **Bonding, Insurance, and Contract Requirements**  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | A. | Were contracts properly executed? |  |  |  |  | | B. | Were contracts entered into after the Removal of Grant Conditions? |  |  |  |  | | C. | How was the contract price determined (lump sum, unit price, etc.)? |  |  |  |  | | D. | For construction contracts for public works projects has the grantee obtained: |  |  |  |  | |  | * A bid guarantee of 5%. |  |  |  |  | |  | * A performance bond from the contractor for 100% of the contract price? |  |  |  |  | |  | A payment bond from the contractor:   * 50% for contracts under $100,000 * 100% for contracts $100,000 or over |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | |  | * Evidence of insurance as required by bid documents? |  |  |  |  | | E. | For contracts $100,000 or over, were the bid documents and contract awards processes certified to by the grantee’s attorney? |  |  |  |  | | F. | Was the Beason-Hammon Clause included in the contract?  (Any contract or amendment with an effective date of 4/1/12 or later.) |  |  |  |  | | G. | Did the grantee maintain a copy of the Certification of Compliance with the Beason-Hammon Act and the E-Verify MOU in the CDBG Program Files?  (Any contract or amendment with an effective date of 4/1/12 or later.) |  |  |  |  |   **IV. General Conditions**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | A. | Does the contract require the contractors to keep all records for five years and to provide access to records? |  |  |  |  | | B. | Does the contract provide for legal remedies for breach of contract by the contractor? |  |  |  |  | | C. | Does the contract provide a termination clause for the grantee stating conditions under which this can happen in contracts over $10,000? |  |  |  |  | | D. | Is there any evidence of conflict of interest between the parties involved? |  |  |  |  | | E. | Were all required labor standards provisions included in bid specifications and contracts? (HUD 4010 or comparable language.) |  |  |  |  |   **V. Supplemental General Conditions**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | A. | Did the contract include clauses for compliance with Executive Order 11246 or E.O. clause? |  |  |  |  | | B. | Were goals for minority and female participation stated? |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | |  |  | Yes | No | N/A | Notes | | C. | Did the contract include a Certification of Non-segregated Facilities? |  |  |  |  | | D. | Did contract include clauses for compliance with Title VI, Civil Rights Act of 1964 and Section 109 of the H&CD Act of 1974? |  |  |  |  | | E. | Was certification to “Section 3” compliance included? |  |  |  |  | | F. | Was there a clause for compliance to Section 504 of the Rehabilitation Act of 1973 ($2,500 or more)? |  |  |  |  | | G. | Is there a clause for compliance with Section 402 of the 1974 Vietnam Veterans Act ($10,000 or more)? |  |  |  |  | | H. | Is there a clause for compliance with the Age Discrimination Act of 1975 ($2,000 or more)? |  |  |  |  | | I. | Is there a clause for compliance with the Clean Air Act, Clean Water Act, and EPA regulations in all contracts over $100,000? |  |  |  |  | | J. | Were wage rates included in the solicitation of bid specifications? |  |  |  |  |   **VI. Change Orders**   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | A. | Is the final contract amount different from the award price due to change orders? |  |  |  |  | |  | * Do cumulative changes result in less than a ten percent increase in the contract award price? |  |  |  |  | |  | * Do change orders pertain to minor changes consistent with the general scope of the original project? |  |  |  |  | |  | * If cumulative changes exceed ten percent, are contract items and unit costs consistent with the original contract? |  |  |  |  | |  | * If the answers to all of the above are no, then are the changes necessitated by extraordinary circumstances that have been documented by the architect and/or engineer? |  |  |  |  | | B. | Have all contract change orders been approved by the local governing body? |  |  |  |  | | C. | For projects from 2009 or later, were all change orders approved by ADECA’s Engineer? |  |  |  |  | |

**Compliance With the Standards ADECA Certified to HUD that ADECA Follows**

ADECA hereby agrees to comply with, and maintain compliance with, the procurement standards stated herein this Procurement Policy as the procurement standards that will be applicable to ADECA and its subrecipients and/or its units of local government who are recipients of CDBG-DR Grant Program funds for Hurricanes Sally and Zeta.

**Compliance With Updating Certification Submissions When Substantial Changes Are Made**

ADECA hereby agrees to comply with, and maintain compliance with, the HUD requirement that ADECA will update the certification submissions when substantial changes are made by ADECA to this Procurement Policy.

**Compliance With Posting Required Documentation to ADECA’s Official Website**

ADECA hereby agrees to comply with, and maintain compliance with, the HUD requirement that ADECA will post the required documentation to ADECA’s official website ([www.adeca.alabama.gov](http://www.adeca.alabama.gov)) on the ADECA CDBG Disaster Recovery webpage for Hurricanes Sally and Zeta (<https://adeca.alabama.gov/cdbg-disaster-recovery/hurricanes-sally-and-zeta/>).

**Compliance With Including Periods of Performance and Date of Completion in all CDBG-DR Contracts**

ADECA hereby agrees to comply with, and maintain compliance with, the HUD requirement that ADECA will include periods of performance and date of completion in all CDBG-DR contracts, grant awards, and/or grant agreement documents issued by ADECA for grant funds awarded from the State’s CDBG-DR Grant for Hurricanes Sally and Zeta.

**Compliance With 24 CFR §570.489(g) and Alternative Requirements**

ADECA hereby agrees to comply with, and maintain compliance with, the HUD requirement that ADECA comply with 24 CFR §570.489(g) and HUD’s alternative requirements.

As stated herein above in HUD’s February 3, 2022 Federal Register Notice (Volume 87, Number 23 on page 6388 at *Section IV.B. Procurement*), ADECA agrees to comply with the procurement processes/requirements published in the *Code of Federal Regulations* at 24 CFR §570.489(g) as part of ADECA’s procurement policy for administering the CDBG-DR Grant Program for Hurricanes Sally and Zeta. This CFR section is posted online at the link <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570/subpart-I/section-570.489>. This CFR section states as follows:

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| **24 CFR § 570.489 Program administrative requirements.**  **\* \* \***  **(g)** ***Procurement.***  When procuring property or services to be paid for in whole or in part with [CDBG funds](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3bc5d2ee66d745a10b7523cd24888b3&term_occur=999&term_src=Title:24:Subtitle:B:Chapter:V:Subchapter:C:Part:570:Subpart:I:570.489), the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by [§570.489(h)](https://www.law.cornell.edu/cfr/text/24/570.489#h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in [2 CFR 200.330](https://www.law.cornell.edu/cfr/text/2/200.330). |

As stated herein above in HUD’s February 3, 2022 Federal Register Notice (Volume 87, Number 23 on page 6388 at *Section IV.B. Procurement*), ADECA hereby agrees to comply with the following “alternative requirements” as part of its procurement requirements:

● **Compliance With Evaluating the Cost or Price of the Product or Service Being Procured**

ADECA hereby agrees to comply with, and maintain compliance with, the procurement standard to evaluate the cost or price of the product or service being procured.

● **Compliance With Establishing Requirements for Procurement Processes for Local Governments and Subrecipients**

ADECA hereby agrees to comply with, and maintain compliance with, the procurement standard to establish requirements for procurement processes for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR §570.489(g), and ADECA shall require a local government or subrecipient to evaluate the cost or price of the product or service being procured with CDBG–DR funds.

● **Compliance With Establishment of Procurement Processes for Other State Agencies**

ADECA hereby agrees to comply with, and maintain compliance with, the procurement standard that if ADECA, as the State grantee and State agency designated as the administering agency, chooses to provide funding to another state agency, then ADECA will specify in its procurement processes whether the state agency implementing the CDBG–DR activity must follow the procurement processes that ADECA is subject to, or whether the state agency must follow the same processes to which other local governments and subrecipients are subject, or its own procurement processes.

● **Compliance With Contract Performance Periods, Performance Requirements/ Liquidated Damages, and Administrative Support Performance**

ADECA hereby agrees to comply with, and maintain compliance with, the procurement standard to require that for all contracts with contractors used to provide goods and services:

1. ADECA, as the State grantee (or procuring entity), must clearly state the period of performance or date of completion in all contracts;

2. ADECA, as the State grantee (or procuring entity), must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages but must incorporate performance requirements; and

3. ADECA, as the State grantee (or procuring entity), may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

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