

Procurement Policies and Procedures (Extract from the 2019 CDBG-DR Policies and Procedures Manual)

This document contains Procurement Procedures that the State and Subgrantees must follow. This document is an extract from the HUD approved Policies and Procedures Manual found on our website.

<https://www.okcommerce.gov/reporting-compliance/cdbg-disaster-recovery-2019/>

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1.1 REQUIREMENT NO. 405 - PROCUREMENT

1.1.1 STATE OF OKLAHOMA POLICIES, REQUIREMENTS, AND PROCEDURES

ODOC is required to comply with state code regarding procurement. In the following section the 2 CFR 200.318-326 standard will be referenced along with the applicable state code as well as ODOC's internal policy to implement the requirement.

The state follows the Oklahoma Central Purchasing Act located in title 74 for state agency implementation and the competitive bidding act of 1974 title 61 and Office of Management and Enterprise Services Title 260: chapter 115 procurement

§200.318 General Procurement Standards: procurement procedures, oversight of contractors, procedures to prevent conflict of interest and a code of conduct, avoid acquisition of unnecessary or duplicative items, state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services, encouraged to use value engineering clauses in contracts, surplus property, award contracts only to responsible contractors possessing, Maintenance of records, for the settlement of all contractual and administrative issues arising out of procurements.

1.1.1.1 74 O.S. § 85.39. Agency Internal Purchasing Procedures

Each state agency shall develop internal purchasing procedures for acquisitions by the state agency. Procedures shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations. Following development, the state agency shall submit the procedures to the State Purchasing Director. The State Purchasing Director shall review the procedures submitted pursuant to paragraph 1 of this subsection to determine compliance with the Oklahoma Central Purchasing Act, rules promulgated pursuant thereto, Sections 3001 through 3010 of this title, and provisions of paragraph 1 of this subsection. The State Purchasing Director shall provide written findings, including details of noncompliance, if any, to the Director of the Office of Management and Enterprise Services.

The Director of the Office of Management and Enterprise Services shall, within fifteen (15) days after the procedures are submitted, notify the state agency that the procedures are in compliance or indicate revisions necessary to bring the procedures into compliance.

ODOC Internal Policy:

ODOC's internal purchasing procedures have been approved by the Office of Management and Enterprise Services. The State purchasing director confirmed that they were in compliance with

the Oklahoma Central purchasing Act in March of 2018. The department responsible for implementing the purchasing procedures is the Financial Services Division. The Chief Financial Officer established the purchasing procedures that were submitted to the State Purchasing Director and then any findings were sent to the Director of the Office of Management and Enterprise Services. Any findings were addressed and revised by March of 2018.

1.1.1.2 74 O.S. § 85.6. Grade and Quality of Merchandise Delivered

State agencies shall have the right to question the grade and quality of any merchandise delivered to the agency. The Central Purchasing Division must determine, through post award contract administration procedures, whether the supplies and services meet the grade and quality specified in the contract and take remedial action with the appropriate supplier if the supply or service does not.

1.1.1.3 OAC 260:115-9-1 - Supplier contract performance

Delivery. A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.

Inspection. Unless otherwise provided in the contract documents, the state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.

Rejection. The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service.

Acquisition title. Title to acquisitions shall not pass from the supplier to the state agency until the state agency receives, inspects and accepts the items. The state agency shall document, at a minimum, the date of delivery, the name and address of the supplier, a description of the goods received, and the signature of the receiving agency employee.

Subcontractor performance. A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall notify the state agency and the Central Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.

Contract changes. If a supplier determines a requested change to the contract or performance exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency. No changes shall be made prior to the approval of a change order in accordance with Section 260:115-9-3.

Contract assignment. A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization unless otherwise specified in the solicitation.

Performance evaluation. State agencies shall develop a process to consistently assess and document the quality of products and/or services acquired from a supplier. State agencies shall retain written documentation of evaluation of the performance of services provided pursuant to a professional services contract with the acquisition file. If the evaluation indicates deficiencies with the supplier's work, the state agency shall submit a Professional Service Evaluation to the State Purchasing Director. [Reference 74 O.S. §85.41]

ODOC Internal Policy:

ODOC's has internal procurement policies which follow these procedures:

3.1 ODOC DR Staff, Programs Planner and Programs Representative will:

- 0** Identify need
- 1** Define specific requirements
- 2** Define price parameters
- 3** Identify potential sources
- 4** Complete Purchase Requisition with detailed information and include all required forms
- 5** Obtain appropriate division and agency approval
- 6** Submit the purchase requisition to Financial Services Contracting Officer
- 7** If purchase is over \$5,000, request will be submitted to the ODOC Certified Purchasing Officer for processing.

3.2 Procurement Contracting Officer will:

- 0** Review the purchase requisition for necessary and required approval
- 1** Determine purchasing methodology
- 2** Perform necessary purchasing functions:
 - Solicitation refer to ODOC Certified Purchasing Office
 - Statewide contract release
 - Open Market release
 - OMES Central Purchasing Requisition or change order
 - Any other approved purchasing method required
- 3** Obtain required documentation from all sources with the help of the end user the DR Programs Planner and Programs Representative
- 4** Verify funding sources
- 5** Complete the purchase order or forward to OMES Central Purchasing for completion
- 6** Send a copy to the end user Programs Planner and Programs Representative and supplier
- 7** Maintain purchase order file

3.3 The end user, currently Programs Planner and Programs Representative will:

- 0** Coordinate delivery of services or product with supplier
- 1** Ensure supplier compliance with requirements through consistent method of monitoring during the acquisition process
 - End users should involve the ODOC certified

Purchasing Officer to help with resolving any supplier issues

- 2 Review and approve an accurate and proper invoice upon completion
- 3 Submit invoice to accounts payable for payment
- 4 Submit any required documentation to Procurement Director as necessitated by the purchase.
 - An example would be the Supplier Performance Evaluation form after the completion of the services.

1.1.1.4 State Conflict & Code of Conduct:

74 O.S. § 85.3. Purchasing Division - Director - Employees - Encouragement of Certain Purchases - Conflict of Interest

All activities of any state agency, department, or institution relating to purchasing shall be under the direction of the Purchasing Division unless otherwise provided by the Oklahoma Central Purchasing Act.

The Purchasing Division shall provide qualified personnel to assist the purchasing activities of state agencies, departments, and institutions.

Each state agency, department, and institution shall designate personnel to coordinate its purchasing functions with the Purchasing Division.

The Purchasing Division may, if the needs of a state agency, department, or institution are such as to so require, employ, and establish a buyer within a state agency, department, or institution. No state agency, department, or institution subject to the Oklahoma Central Purchasing Act shall have or maintain a purchasing section without the prior approval in writing of the Purchasing Division unless otherwise provided in the Oklahoma Central Purchasing Act.

The Purchasing Division shall make acquisitions from industries operated by the Department of Corrections pursuant to the provisions of Section 549.1 of Title 57 of the Oklahoma Statutes. None of the personnel authorized by this section shall:

- *Sell to or otherwise provide acquisitions to any state agency subject to the Oklahoma Central Purchasing Act;*
- *Be employees, partners, associates, officers, or stockholders in or with any business entity that sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act;*
- *Be employed in any of the positions authorized by this section if a spouse or child owns any stock in any business entity which sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act; or*
- *Be employed in any of the positions authorized by this section if a relative within the third degree of consanguinity or affinity sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act or is interested in any business*

entity which does so, except that such relative, excluding a spouse or child, may own Five Thousand Dollars (\$5,000.00) worth or less, or one percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to the Oklahoma Central Purchasing Act.

ODOC Internal Policy:

ODOC has identified Department of Programs Operational Logistics to work with the Purchasing Division within the Office of Management and Business Services (OMES) on procurement. The purchasing division main role in conflict of interest is to ensure that all goods and services are procured fairly and within Federal and State requirements. In order to ensure there is no conflict of interest, CDBG-DR staff, currently the DR Programs Planner and Programs Representative, will work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. These details are then sent to the Certified Purchasing Officer at OMES to create the solicitation and send the solicitation to all recipients on the vendor list. OMES handles the scheduling of interviews, creating the guidelines and questionnaires for vendors and decides the processes ODOC will take to procure such goods or services. This allows a separation of duties when ODOC is procuring goods and services.

1.1.1.5 State procedure to avoid acquisition of unnecessary or duplicative items

74 O.S. § 85.4. Requisitions - Determination of Quantitative Needs by Agencies - Forms - Information Required - Lease-Purchase Agreements - Change Order or Addendum - Lease of Products - Purchases from Federal Government

Subject to the provisions of this section, every state agency shall determine its own quantitative needs for acquisitions and the general class or nature of the acquisitions.

The Director of the Office of Management and Enterprise Services shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of the Office of Management and Enterprise Services to effectuate the provisions of this section and the Oklahoma Central Purchasing Act.

A contract that results from a requisition required by this section for nonprofessional services or professional services whether or not such services are exempt from the competitive bidding requirements of this section or pursuant to Section 85.7 of this title shall be signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying that:

- *No employee of the state agency is able and available to perform the services to be provided pursuant to the contract;*
- *The state agency shall receive, review and accept a detailed work plan from the supplier for performance pursuant to the contract if requested by the State Purchasing Director;*
- *The state agency has developed, and fully intends to implement, a written plan providing*

for the assignment of specific state agency personnel to:

- *Monitoring and auditing supplier performance,*
- *The periodic review of interim reports, or other indications of performance, and*
- *If requested by the State Purchasing Director, the ultimate utilization of the final product of the nonprofessional or professional services,*
- *The work to be performed under the contract is necessary to the state agency's responsibilities, and there is statutory authority to enter into the contract,*
- *The contract will not establish an employment relationship between the state or the state agency and any persons performing under the contract,*
- *No current state employee will engage in the performance of the contract, unless specifically approved by the State Purchasing Director,*
- *The purchase of the nonprofessional or professional services is justified, and*
- *The contract contains provisions that are required by Section 85.41 of this title.*

1.1.1.6 74 O.S. § 85.41. Professional Services Contracts

If the final product of the professional services contract is a written proposal, report, or study, the professional services contract shall require the supplier to certify that the supplier has not previously provided the state agency or another state agency with a final product that is a substantial duplication of the final product of the proposed contract.

ODOC Internal Policy:

CDBG-DR Staff Programs Planner and Programs Representative will contact the Contracting Officer to request a solicitation of services that is beyond the scope of ODOC/CD staff. DR Staff and the contracting officer will work to write requirements for a solicitation. The Certified Purchasing Officer will ensure that all requirements are applicable to the program and check with other solicitations to inquire about duplicative services or items or unnecessary goods or services that are being requested. If the CPO finds that the solicitation is not duplicative, they will send the requirements to OMES Purchasing Division to advertise the solicitation. The CPO at OMES will also check that other solicitations for goods and services have or have not been procured to check for duplicative or unnecessary items. If the CPO finds that the solicitation is duplicative, they will contact the CDBG-DR staff to inform them of the duplicative item or services and suggest another process. If there is any exemptions to the previously stated rules the Chief Administrative Officer must sign off on such an exemption.

3.4 Professional Services

- 0 Requirement: As previously referenced in this manual, professional services are not exempt from competitive bid, with the exception of professional services defined in Title 18 O.S. § 803. If the result of the professional service is a written plan, study or proposal, then a Supplier Contract Certification must be completed by the supplier. Pursuant to § 85.41.C. if the work product of the contract is a report, the state agency shall file the report with the State Librarian and Archivist. For all professional services, regardless of the results, a supplier

performance evaluation must be completed by the end user upon completion of the service.

- 1 Process Placement: The Supplier Contract Certification must be signed prior to issuance of a purchase order. The Supplier Performance Evaluation should be completed prior to payment of the last invoice.
- 2 Required Forms OMES Central Purchasing form CP-021 Supplier Contract Certification and OMES Central Purchasing form CP-016 Supplier Performance Evaluation.

Additionally, regarding Professional Services, ODOC has procedures on how these services are evaluated:

Professional Service Evaluations: State statutes require a state agency evaluate the performance of the professional services upon completion of the services – the DR Programs Planner will do this using the OMES Supplier Performance Evaluation.

1. The performance evaluation shall indicate the quality or work product of the professional service provider.
2. The agency may use the OMES Central Purchasing Supplier Performance Evaluation form for documenting the quality of work of the professional service provider.

The evaluation documentation shall be maintained in the agency procurement file.

3. Evaluations indicating unsatisfactory service must be sent to OMES Central Purchasing.

ODOC Internal Policy:

ODOC/CD DR Staff Programs Planner and Programs Representative will be in charge of filling out the OMES Central Purchasing Supplier Performance Evaluation form for documenting the quality of work of the professional service provider. DR Staff will turn the form in to OMES Central Purchasing.

1.1.1.7 State use of co-operative agreement to share common goods:

OAC 260:115-7-3 - Methods state agencies use to make acquisitions

State agencies shall make acquisitions using a method of acquisition in this section.

State Use Committee. State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule at the fair market price if the supplier's delivery date meets state agency requirements. State Use Committee contracts are mandatory contracts to the extent a fair market value has been established. State agencies shall utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S. §§ 3001 et seq. If an acquisition is available from both the State Use Committee procurement schedule and the

Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule.

Oklahoma Correctional Industries. If an acquisition is not available from the State Use Committee within the time period required by the purchasing state agency or if it does not have an established fair market value, state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S. §549.1 or statewide contracts as follows:

If a state agency determines in the acquisition of a product or service within the agency's acquisition authority, the product or service is available from OCI and is the lowest and best offer, the agency may place a direct order with OCI without competitive bidding. If an acquisition is competitively bid, the award shall be made to OCI upon determination that OCI is lowest and best. For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to OMES for issuance of a solicitation to include OCI as a supplier. The award shall be made to OCI if such product or service is the lowest and best bid. If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products.

If the State Purchasing Director determines that a product or service the Oklahoma Correctional Industries produces does not meet the reasonable state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries.

If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the OMES Director shall resolve the issue.

Statewide Contracts. The State Purchasing Director shall designate statewide contracts as mandatory or non-mandatory.

Mandatory statewide contract. The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

Non-mandatory statewide contracts. State agencies are encouraged to use non-mandatory statewide contracts. Whenever a state agency acquires a product or service from an alternate source, the acquisition shall be made in accordance with the Central Purchasing Act, the rules of this chapter and any other laws and rules applicable to the acquisition.

ODOC Internal Policy:

If ODOC/CD DR Staff Programs Planner and Programs Representative gives solicitation requirements to the Central Purchasing Division of OMES and there is an opportunity for a cooperative agreement to share common goods with other state agencies, OMES Central Purchasing will receive such inquiries from other agencies and arrange the agreement between agencies if such agencies agree.

3.144 Intergovernmental or Interagency Purchases

0 Definition: By Title 74 O.S. § 581 or 74 O.S. §§ 1001 through 1008, agencies may contract with any political division or subdivision of the State, any political subdivision of another state, or any agency of the United States or the State. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division, or the provisions related to the State Use Committee.

1 Process:

- The end user DR Programs Planner and Programs Representative identifies the need or program that requires interaction with the governmental unit.
- The end user defines the requirements within the acquisition.
- Bilaterally approved documentation is created to support the acquisition (Done by end users, but ensures documentation is correct). i.e. quote, scope of work, contract, etc.
- A completed requisition is attached to the documentation, approved and sent to ODOC Procurement (Certified Purchasing Officer) for processing.

1.1.1.8 State to use surplus property:

74 O.S. § 85.5. Powers and Duties of State Purchasing Director

J. 6. Development of electronic means of making state agencies aware of office furniture, equipment, machinery, tools, and hardware available for purchase from the surplus property programs.

ODOC Internal Policy:

CDBG-DR staff Programs Representative and Programs Planner work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for the use of surplus property. These details are then sent to the Certified Purchasing Officer at OMES if purchase is over \$50,000.

3.145 Intergovernmental or Interagency Purchases Definition: By Title 74 O.S. § 581 or 74 O.S. §§

0 ODOC Purchasing Authority and hierarchy

- 1 The State Purchasing Director, under the supervision of the Director of the Office of Enterprise and Management Services, shall have sole and exclusive authority and responsibility for all acquisitions used or consumed by state agencies. (Title 74 § Section 85.5.(A))
- 2 State agencies shall make acquisitions in accordance with state statutes as outlined in Title 74 O.S. §85.1 et seq. and administrative rules as outlined by Administrative Rules Oklahoma Administrative Code (OAC) 260:115.
- 3 The ODOC Certified Purchasing Officer is the delegated purchasing authority and primary CPO for ODOC.
- 4 The ODOC Certified Purchasing Officer reports to the Deputy Director/Legal Counsel.
- 5 The Deputy Director/Legal Counsel reports to Secretary of Commerce.

ODOC Internal Policy:

CDBG-DR staff Programs Representative and Programs Planner will work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. For purchases over \$50,000, these details are then sent to the Certified Purchasing Officer at OMES to create the solicitation and send the solicitation to all recipients on the vendor list. OMES handles the scheduling of interviews, creating the guidelines and questionnaires for vendors and decides the processes ODOC will take to procure such goods or services.

1.1.1.9 State award contracts only to responsible contractors

74 O.S. § 85.5. Powers and Duties of State Purchasing Director

I. The State Purchasing Director shall endeavor to satisfy state agencies in terms of cost, quality, and timeliness of the delivery of acquisitions by using bidders who have a record of successful past performance, promoting competition, minimizing administrative operating costs, and conducting business with integrity, fairness, and openness.

J. The State Purchasing Director shall undertake the following:

- 1. The use of electronic commerce pursuant to the Oklahoma Online Bidding Act for solicitation, notification, and other purchasing processes;*
- 2. Monitoring rules promulgated pursuant to the Oklahoma Central Purchasing Act to ensure that the rules, satisfy the interests of the state, are clear and succinct, and encourage efficiency in purchasing processes;*
- 3. A program to identify suppliers with poor delivery and performance records;*
- 4. Development of criteria for the use of sealed bid contracting procedures, negotiated contracting procedures, selection of types of contracts, post award administration of purchase orders and contracts, contract modifications, termination of contracts, and contract pricing;*
- 5. Continual improvement in the quality of the performance of the Purchasing Division through*

training programs, management seminars, development of benchmarks and key management indicators, and development of standard provisions, clauses and forms;

ODOC Internal Policy:

The State Purchasing Director created the criteria used for sealed bid contracting procedures. This criteria is then used by the Certified Purchasing Officer and the Contracting Officer to create a solicitation of goods or services. OMES CPO will check to ensure that such criteria is legitimate and accurate for such solicitation. If this type of procurement is needed as part of the CDBG-DR grant, Programs Planner and Programs Representative will work with OMES CPO.

- C. Best Value Criteria: bid or proposal evaluation criteria which include, but are not limited to, the following: (Title 74 §Section 85.2.a-j.)
- a. The acquisition's operational cost a state agency would incur
 - b. The quality of the acquisition, or its technical competency,
 - c. The reliability of the bidder's delivery and implementation schedules,
 - d. The acquisition's facilitation of data transfer and systems integration,
 - e. The acquisition's warranties and guarantees and the bidder's return policy,
 - f. The bidder's financial stability,
 - g. The acquisition's adherence to the state agency's planning documents and announced strategic program direction,
 - h. The bidder's industry and program experience and record of successful past performance with acquisitions of similar scope and complexity,
 - i. The anticipated acceptance by user groups and
 - j. The acquisition's use of proven development methodology and innovative use of current technologies that lead to quality results.

1.1.1.10 State maintains records sufficient to detail the history of procurement

OAC 260:115-5-9 - Retention of state agency acquisition records

Retention time period. A state agency shall retain all records relative to acquisitions and contracts as follows:

Acquisitions independently processed by agency. Retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later; and,

Acquisition documents submitted to Central Purchasing Division for processing. Retain documents until one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies and provided no

legal actions are pending, then destroy. If legal action is pending destroy two (2) years after exhaustion of all legal remedies.

Acquisition documents processed by Central Purchasing Division. The Central Purchasing Division shall retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later.

Records retention location. A state agency shall retain procurement records and documents in a reasonably accessible location unless a written waiver is provided by the State Purchasing Director.

Records availability. A state agency shall make acquisition records available to the State Purchasing Director for review and the OMES Audit staff for audit purposes.

Records to be retained. A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.

ODOC Internal Policy:

CDBG-DR Staff Programs Planner and Programs Representative will retain all procurement documents electronically in ODOC drives. ODOC's CPO will also keep electronic records in ODOC's drive. The OMES CPO will retain all procurement documents in a separate electronic file within OMES drives.

On record retention:

Record Retention:

1. ODOC Procurement will maintain records for all purchase orders and their associated documentation. This does not include invoices or payment claims.

- a. Records must be maintained for seven (7) years following completion or termination of the acquisition.
- b. If an audit litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later.

- c. ODOC Procurement will maintain P-card records for seven (7) fiscal years. If audit, litigation or other action is started before the end of the seven year period, the records are required to be retained for two years from the date all issues arising out of the action are resolved or until the end of the seven year retention period, whichever is longer.

1.1.1.11 State responsible for the settlement of all contractual and administrative issues arising out of procurements

OAC 260:115-9-7 - State agency and supplier disputes

Quality assurance inspections by state agencies. A state agency must establish quality assurance procedures that ensure timely and thorough inspection of acquisitions delivered to the agency. It is critical that problems with delivery or the quality of the acquisition delivered be promptly communicated to the agency's primary procurement official and the State Purchasing Director.

Resolution of dispute between a state agency and supplier. Whenever a supplier provides a state agency with defective products or fails to perform in accordance with contract requirements, a state agency shall notify the supplier in writing of the deficiency and include information necessary for the supplier to resolve the problem. If the state agency and supplier are unable to resolve the dispute, the state agency shall submit a written request for dispute resolution to the State Purchasing Director.

State agency submission of supplier performance evaluation form. A state agency shall request the State Purchasing Director seek dispute resolution by submitting a Supplier Performance Quality Report, whenever a supplier:

- 1. Fails to timely retrieve and replace an acquisition that does not meet or exceed contract specifications;*
- 2. Does not refund payment for an acquisition that does not meet or exceed contract specifications;*
or
- 3. Fails to resolve any other problem that conflicts with the contract specifications in a timely manner.*

ODOC Internal Policy:

ODOC/CD DR Staff Programs Planner and Programs Representative will be in charge of submitting any issues with the supplier to the supplier directly in writing. If the issue cannot be initially resolved, DR Staff will contact ODOC Chief of Staff and Legal Counsel and the Procurement Director. If it is still not resolved, the discrepancy will be referred to OMES Central Purchasing. If any discrepancy cannot be resolved still, DR Staff will contact the State Purchasing Director and submit a request for dispute resolution. DR staff will request the Purchasing Director submit a Supplier Performance Quality Report.

9. Contract Administration

a. Supplier Conflict Resolution:

1. All communications with suppliers should be in writing, but this is not

always feasible, and misunderstandings do occur.

2. The end user must make an attempt to cure or correct their problem and give the same opportunity to the supplier. If a problem occurs, all communications between parties must be in writing to prevent further misunderstandings and to document the file.

3. If a mutually satisfactory solution cannot be obtained between the two parties, contact the Procurement Director or ODOC Chief of Staff and Legal Counsel for assistance. If either the Procurement Director or ODOC Legal Counsel cannot resolve the issue, the matter will be referred to OMES Central Purchasing.

4. Regardless of how the issue is resolved, the OMES Central Purchasing Supplier Performance Evaluation form must be completed for documentation.

§200.319 Competition Summary: full and open competition, procurements conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences, written procedures for procurement transactions, all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and provide good competition.

1.1.1.12 State procedures on full and open competition

74 O.S. § 85.7. Competitive Bid or Proposal Procedures

Except as otherwise provided by the Oklahoma Central Purchasing Act, no state agency shall make an acquisition for an amount exceeding Fifty Thousand Dollars (\$50,000.00) or the limit determined by the State Purchasing Director pursuant to rules authorized by Section 85.5 of this title, not to exceed One Hundred Thousand Dollars (\$100,000.00), without submission of a requisition to the State Purchasing Director and submission of suppliers' competitive bids or proposals to the State Purchasing Director.

Any acquisition a state agency makes shall be made pursuant to the Oklahoma Central Purchasing Act and rules promulgated pursuant thereto. Split purchasing for the purpose of evading the requirement of competitive bidding shall be a felony.

Split Purchasing occurs when an end user or division splits the total acquisition of a known quantity acquisition into two or more acquisitions to evade the competitive requirements. This includes multi-year agreement totals, total project costs, total one time purchases, and aggregate same commodity purchases for a fiscal year. Split purchasing for the purpose of evading the requirement of competitive bidding shall be a felony pursuant to title 74. O.S. § 85.7(A)(2)(a).

The State Purchasing Director may waive or increase the limit authorized for a state agency acquisition by not more than ten percent (10%) to perfect an otherwise valid acquisition inadvertently exceeding the limit due to administrative error by the state agency or unforeseeable circumstances. The state agency shall request a waiver upon the discovery of the error or circumstance to the State Purchasing Director on a form the Director requires.

The State Purchasing Director shall report all requests for waivers or increases, stating the amount and whether the request was granted or denied, monthly to the Governor, President Pro

Tempore of the Senate, and Speaker of the House of Representatives.

Requisitions pursuant to this section shall not be required prior to emergency acquisitions by a state agency not exceeding One Hundred Thousand Dollars (\$100,000.00). The state agency shall submit a requisition to the State Purchasing Director within five (5) days following the acquisition together with a statement of the emergency. The State Purchasing Director shall send the requisition and a written analysis to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives specifying the facts and circumstances giving rise to the emergency requisition.

Requisitions pursuant to this section for acquisitions to alleviate a serious environmental emergency shall not be required if, upon receiving a request from the Chair of the Corporation Commission and after having examined the facts and circumstances of the case, the Governor certifies in writing the existence of a serious environmental emergency. For the purposes of this section, "serious environmental emergency" means a situation within the jurisdiction of the Commission:

In which serious damage to the environment will quickly occur if immediate action is not taken and the damage will be so significant that the urgent need for action outweighs the need for competitive bids, or

A situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

Acquisitions for repairs of equipment in emergencies, of livestock through a market agency, dealer, commission house, or livestock auction market bonded or licensed under federal or state law, the purchase or collection of semen or embryos, and the placement of embryos into recipient livestock shall not require requisitions pursuant to this section or any other provisions of the Oklahoma Central Purchasing Act.

Sole source or sole brand acquisitions by a state agency or the State Purchasing Director shall comply with Section 85.45j of this title.

Any acquisition of a service which the Office of Management and Enterprise Services has approved as qualifying for a fixed and uniform rate shall be made pursuant to provisions of this paragraph.

The Office of Management and Enterprise Services shall establish criteria and guidelines for those services which may qualify for a fixed and uniform rate.

ODOC Internal Policy:

CDBG-DR staff Programs Representative and Programs Planner work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. These details are then sent to the Certified Purchasing Officer at OMES to create the solicitation and send the solicitation to all recipients on the vendor list. Vendor lists are standard within OMES and created to ensure competitive procurement. All

procurement lists used have the most up-to-date qualified vendors in the State. OMES handles the scheduling of interviews, creating the guidelines and questionnaires for vendors and decides the processes ODOC will take to procure such goods or services. This allows a separation of duties when ODOC is procuring goods and services.

1.1.1.13 State agency purchasing procedures

State procurement procedures are found at OAC 260: 115: OAC 260:115-5-7 - State agency purchasing procedures

Development. State agencies shall develop internal purchasing procedures for acquisitions by the state agency pursuant to 74 O.S. §85.39, “. . .which shall, at a minimum, include provisions for the state agency’s needs assessment, funding, routing, review, audits, monitoring, and evaluations”. A state agency must include the method whereby a supplier may protest a contract award by the agency pursuant to 260:115-3-19 in its internal purchasing procedures, and include provisions for procurement policies under statutorily applicable emergency events. Internal purchasing procedures are not effective until approved in accordance with this section.

ODOC Internal Policy:

OAC 260:115-3-19 Supplier Protest

Legal counsel will review and process any supplier protests, however the OMES Central Purchasing Administrative Rule OAC 260:115-3-19 Supplier Protest, will be followed.

And:

9. State Use Product or Service:

A. Definition: Products/services are available from suppliers employing the severely handicapped pursuant to Title 74 O.S.§§ 3001-3010 State agencies shall make acquisitions from the suppliers approved on the State Use Procurement Schedule and by the State Use Committee which governs the products or services available. The Department of Commerce shall make maximum utilization of such products/services and no similar products or services shall be purchased by the agency from any other source.

b. The Process:

ii. End user DR Programs Planner and Programs Representative identifies needs for the acquisition

ii. End user identifies the requirements of the needs

1. Detailed specifications for products or,

2. required services.

iii. An internal ODOC requisition is prepared by the end user citing:

1. The specific need and the requirements

2. The funding source and availability

3. The projected budget

4. Applicable terms and conditions

iv. All documentation is attached to the requisition.

- v. The requisition is routed through the appropriate division and agency approval levels.
 - vi. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.
 - vii. Submission to ODOC Procurement Certified Purchasing Officer where:
 - 1. The requisition is reviewed for completeness and applicability
 - 2. if it is a State use Product, the correct information is transferred to the requisition.
 - 3. It is entered into the purchasing software system
 - 4. It is signed by the ODOC Procurement Director
 - 5. The purchase order is distributed to the supplier and the end user.
- C. Required Forms:
- i. Requisition
 - ii. Required contract specific documentation
 - iii. Documentation for special purchases as outlined in Appendix B
 - iv. Purchase order.

1.1.1.14 State use of pre-qualified lists are current and provide competition

OAC 260:115-3-3 - Supplier registration

Purpose. Unless otherwise specified, supplier registration pursuant to this section provides a supplier with automatic notification of bid opportunities but is not required for a supplier to respond to a solicitation. Automatic notification is dependent upon a supplier providing the Office of Management and Enterprise Services valid and up-to-date information. Supplier registration is required for any supplier selected for award or renewal of a contract pursuant to the Central Purchasing Act and these rules. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

Suppliers may be required to prequalify for the purpose of responding to online solicitations.

Suppliers shall prequalify in accordance with procedures established by the State Purchasing Director.

Registration. A supplier may apply for registration online as established by 74 O.S. 85.33, for each commodity class listed in the registration application, to be placed on the Supplier List for a one-year period. Registered suppliers are to be notified by the Central Purchasing Division or by non-exempt state agencies pursuant to applicable laws and rules, of solicitations for each commodity class for which a supplier registers. The State Purchasing Director shall not place a supplier on the Supplier List if the supplier provides incomplete registration information or if the State Purchasing Director, in his or her sole discretion, determines the supplier is not a responsible supplier.

Registration fee. A registered supplier may renew a registration prior to the expiration date of the

supplier's current registration in order to remain on the Supplier List. The Office of Management and Enterprise Services shall not refund supplier registration fees.

Voluntary removal from Supplier List. A supplier may submit a written request to the Central Purchasing Division to request to be removed from the Supplier List for a commodity.

ODOC Internal Policy:

CDBG-DR staff Programs Representative and Programs Planner work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. Vendor lists are created through the online platform PeopleSoft. If a vendor wants to be included on a vendor list for certain commodities, they must register through PeopleSoft in order to be on vendor lists. All qualified vendors will be on the vendor lists that OMES uses for solicitation. The Certified Purchasing Officer at OMES chooses the commodities being requested, as well as several other closely related lists, to cast a wide net to all potential vendors. Every new vendor that registers to the vendor list through PeopleSoft automatically updates the vendor list to have all eligible vendors listed for OMES. OMES can only choose from lists that meet the correct commodities but cannot delete vendors from a list. OMES does have the power to add additional vendors that request to be listed even if they are not on the PeopleSoft lists.

§200.320 Methods of procurement to be followed: Micro-purchase, small purchase, sealed bids, competitive and non-competitive bids.

1.1.1.15 State methods of procurement:

OAC 260:115-7-11 - Acquisitions not exceeding \$5,000.00: State agencies shall make open market acquisitions not exceeding \$5,000.00 provided the acquisition process is fair and reasonable.

OAC 260:115-7-13 - Acquisitions over \$5,000.00 and not exceeding \$25,000.00

Basic Requirements. State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions over \$5,000.00 and not exceeding \$25,000.00 pursuant to this section.

Acquisition Preparation. The state agency shall prepare and document the state agency's specifications and all information required from the supplier for an acquisition. An agency shall choose an appropriate solicitation methodology, i.e. formal or informal competitive solicitation, based on the complexity of an acquisition.

Supplier selection. The state agency shall solicit from a minimum of three (3) registered suppliers (if available) for acquisitions over \$5,000.00 and not exceeding \$10,000.00 and ten (10) registered suppliers for acquisitions over \$10,000.00 and not exceeding \$25,000.00, from the Supplier List in the appropriate commodity classification. Selection of suppliers shall be rotated whenever more than ten (10) suppliers are registered.

State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce. The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition.

Documentation of prices, delivery dates and the evaluation shall be placed in the acquisition file. All awards shall be based on lowest and best or best value criteria. Certifications, verifications and other required documents.

Non-collusion certification. Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

Sales Tax Permit Verification. Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the supplier's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

Certifications for services contracts. Additional documents required to be included in contracts for professional or nonprofessional services include:

If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

Bonds and sureties. The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

Form of bond. The bid bond, performance bond or other type of surety shall be subject to the approval of the State Purchasing Director. For bonds requiring a cash deposit, the amount specified by the State Purchasing Director shall be paid by certified check or cashier's check.

Irrevocable letter of credit. In lieu of bonds specified in this subsection, the State Purchasing

Director may approve submission of an irrevocable letter of credit.

Bond or surety return. When the State Purchasing Director specifies a bid contain a bid bond, performance bond, or other type of surety, the State Purchasing Director shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

ODOC Internal Policy:

CDBG-DR staff Programs Representative and Programs Planner work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. This allows a separation of duties when ODOC is procuring goods and services. Here is the detailed process:

1. Competitive bids or proposals between \$5,000.01 and \$10,000:
 - a. Definition: Based on the statutory Oklahoma Central Purchasing Act, all purchases over \$5,000 that are not a purchasing methodology other than competitive bids listed in Procurement Procedures Section 6 must be competed based on defined rules listed in this section.
 - b. Process:
 - i. End user DR Programs Planner and Programs Representative identifies needs for the acquisition
 - ii. End user identifies the requirements of the needs
 1. Detailed specifications for products, or
 2. Required services.
 - iii. End user identifies a minimum of three (3) potential suppliers.
There are several sources for identifying potential suppliers and they include but are not limited to:
 - a. Three (3) registered suppliers from OMES Central Purchasing list
 - b. Telephone Book
 - c. Internet
 - d. Industry specific resource guides
 - e. Previous ODOC work experience
 - f. word of mouth.
 - iv. An internal ODOC requisition is prepared by the end user citing:
 1. The specific need and the requirements for the acquisition
 2. The list of suggested suppliers
 3. The funding source and availability
 4. Applicable terms and conditions related to the acquisition.
 - v. An informal solicitation is performed by the end user or ODOC Procurement. Informal solicitation can be performed by phone, facsimile, email or mail with each potential supplier receiving requirements and same response instructions. A completed Non-collusion Certification is to be included and returned by the bidder pursuant to Title 74, O.S. Section 85.22.

- vi. The end user reviews the responses to the solicitation for responsiveness to the solicitation.
- vii. The end user evaluates the responses based on the requirements of the solicitation.
- viii. The end user completes an award recommendation that includes an explanation of the solicitation process and evaluation.
- ix. All documentation is attached to the requisition.
- x. The requisition is routed through the appropriate division and agency approval levels. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.
- xi. Submission to ODOC Procurement where:
 - 1. Requisition and competition is reviewed for completeness, competitive fairness, and applicability by a CPO;
 - 2. Agency requests verification of Workers' Compensation Insurance;
 - 3. Entered into purchasing software system.
 - 4. Signature of ODOC Procurement Director;
 - 5. Disbursement of purchase order to supplier and end user.

c. Required Documentation:

- i. Requisition for the acquisition
- ii. Original documentation pertaining to competitive process.
- iii. if the acquisition is a service, either a service acquisition term is located in the standard comments section in PeopleSoft or a Supplier Contract completed.
- iv. Completed Non-collusion Certification pursuant to Title 74, O.S. Section 5.22.
- v. Completed OMES Vendor/Payee Forms.
- vi. Applicable documentation if it is a special classification as identified in Appendix B.

Certification is

1.1.1.16 OAC 260:115-7-15 - Acquisitions over \$25,000,00 and not exceeding \$50,000.00

Basic requirements. State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions exceeding \$25,000.00 but not exceeding \$50,000.00 in accordance with this section, by means of a formal method of competitive solicitation, i.e. sealed bid solicitations.

Acquisition preparation. The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the specifications, terms and

conditions for the acquisition to each supplier selected for notification. Whenever the state agency issues a solicitation for acquisition by invitation to bid or RFP, the agency shall develop evaluation criteria for the acquisition prior to bid opening.

Supplier selection. The state agency shall solicit all registered suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director or the Federal government shall not be awarded a contract.

State agencies shall solicit prices and delivery dates by means of sealed bid using mail or electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.

The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.

All awards shall be based on lowest and best or best value criteria. Certifications, verifications and other required documents.

Non-collusion certification. Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

Sales Tax Permit Verification. Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the supplier's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

Certifications for services contracts. Additional documents required to be included in contracts for professional or nonprofessional services include:

If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. §85.4]

Each contract for services shall include a statement certifying that no person who has been

involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

Bonds and sureties. The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

Form of bond. The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashier's check.

Irrevocable letter of credit. In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit. (iii)Bond or surety return. When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

Verification of registration and status with Secretary of State. Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204. Documentation of verification of registration and status with the Secretary of State must include, at a minimum, a copy of the entity summary information from the Secretary of State's website or the supplier's statement providing specific details supporting the exemption claimed, must be filed in the acquisition file.

OAC 260:115-7-17 - Acquisitions over \$50,000.00 and not exceeding \$100,000.00

State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7, shall send a written request to the State Purchasing Director to request acquisition authority exceeding \$50,000.00 but not exceeding \$100,000.00. The State Purchasing Director shall consider the agency's internal purchasing procedures, procurement training and certifications of the agency's procurement staff, and any other information deemed necessary by the State Purchasing Director to make the determination to approve or disapprove the request. If approved, the agency shall:

- Make all acquisitions within this acquisition authority pursuant to 74 O.S. §85.7, any other applicable state laws and rules, including Section 260:115-7-15;*
- Award all contracts based on lowest and best or best value criteria; and,*
- Solicit all suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency using solicitation forms prescribed by the OMES Director.*

ODOC Internal Policy:

1 Competitive Bids or Proposals between \$10,000.01 and \$25,000:

- a. Definition: Based on the statutory Oklahoma Central Purchasing Act, all purchases over \$10,000 and less than \$25,000, that are not a purchasing methodology other than Competitive Bid listed in Section 6, must be competed based on defined rules listed in this section.
- b. Process:
 - i. End user DR Programs Planner and Programs Representative identifies needs for the acquisition
 - ii. End user identifies the requirements of the needs for the acquisition
 - 1. Detailed specifications for products,
 - 2. Or Required services.
 - iii. An internal ODOC requisition is prepared by the end user citing:
 - 1. The specific need and the requirements for the acquisition
 - 2. Ten (10) registered suppliers from OMES Central Purchasing list
 - 3. A list of other suggested suppliers if any
 - 4. The funding source and availability
 - 5. The projected budget
 - 6. Applicable terms and conditions
 - iv. All documentation is attached to the requisition.
 - v. The requisition is routed through the appropriate division and agency approval levels.
 - vi. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.
 - vii. Submission to the ODOC Certified Purchasing Officer where:
 - 1. Specifications related to the acquisition are reviewed for completeness. Certified Purchasing Officer will clarify any requirements or required terms with end user.
 - 2. All OMES Central Purchasing registered suppliers will be identified, and a compilation of the suggested suppliers and the identified OMES registered suppliers will establish a supplier list for the solicitation.
 - 3. A formal solicitation process will be used to notify the suppliers on the supplier list of the solicitation and the response due date and time. All communication between suppliers and the agency will be conducted through the ODOC Certified Purchasing Officer listed on the solicitation only.
 - 4. Upon receipt of solicitation responses at the appointed due date and time, the Certified Purchasing Officer will complete a response tabulation sheet, and review

responses for solicitation of responsiveness. A completed Non-collusion Certification is to be included and returned by bidder pursuant to Title 74, O.S. Section 85.22.

5. During the solicitation process, end users will be required to develop an evaluation matrix based on the requirements of the solicitation, and develop a standardized reference questionnaire sheet for the solicitation.
- viii. Once the tab sheet is complete, responsiveness determined, evaluation matrix, and reference questionnaire have been developed, the end user will receive copies of the responses to evaluate. During the evaluation process, an independent ODOC resource or ODOC Certified Purchasing Officer will verify references based on the reference questionnaire.
- ix. Upon completion of the evaluation process, the end user will forward an award recommendation to ODOC Certified Purchasing Officer that includes all original evaluation documents.
- x. The evaluation process and recommendation is reviewed for completeness, competitive fairness, and applicability by a CPO All CPO questions and subsequent evaluation committee answers pertaining to the evaluation process will be documented.
- xi. Once the evaluation process is validated, the Certified Purchasing Officer will review the supplier information for Secretary of State registration number, Oklahoma Sales Tax Permit, Workers' Compensation Insurance coverage, and Federal debarment status.
- xii. The award is entered into the purchasing software system
- xiii. Signature of ODOC Deputy Director/ Chief of Staff and Legal Counsel;
- xiv. Disbursement of purchase order to supplier and end user.

C. Required Documentation:

Pre-solicitation requirements

1. Requisition
2. Solicitation requirements
3. Evaluation Matrix
4. Reference Questionnaire
5. Registered supplier List for category and other sources
6. If it is a service acquisition, a service acquisition statement is located in the PeopleSoft standard comments section
7. Applicable documentation if it is a special classification as identified in Appendix B.

II. Award Document requirements

1. Completed Non-Collusion Certification pursuant to Title 74 O.S. Section 85.22
2. OMES Vendor/Payee Form
3. If it is a professional or non-professional service, a Supplier Contract Certification is completed
4. Any special certifications required by requirements of the solicitation.
5. Completed evaluation documentation
6. Completed reference questionnaires
7. Completed solicitation response tabulation sheet
8. Award recommendation.

3. Competitive Bids or Proposals over \$25,000.01 and not exceeding \$50,000:

a. Definition: Based on the statutory Oklahoma Central Purchasing Act, all purchases over \$25,000 and not exceeding \$50,000 that are not a purchasing methodology other than Competitive Bid listed in Section 6 must be completed based on defined rules listed in this section

b. Process

- i. End user DR Programs Planner and Programs Representative identifies needs for the acquisition
- ii. End user identifies the requirements of the needs for the acquisition
 1. Detailed specifications for products, or
 2. Required services.
- iii. An internal ODOC requisition is prepared by the end user citing:
 1. The specific need and the requirements for the acquisition
 2. All registered suppliers for the category and other sources
 3. The funding source and availability
 4. The projected budget
 5. Applicable terms and condition
- iv. All documentation is attached to the requisition.
- v. The requisition is routed through the appropriate division and agency approval levels. The approval routing for each division is not defined in these purchasing procedures, but is maintained in Financial Services.
- vi. Submission to ODOC Procurement where:
 1. Specifications are reviewed for completeness. Certified Purchasing Officer will clarify any requirements or required terms with the end user.
 2. Specifications are then formatted in the standardized OMES Central Purchasing Solicitation format.
 3. Suggested evaluation matrix (if required) will be completed by ODOC Procurement and sent to the end user for review and modified if required.
 4. A PeopleSoft (EPRO) requisition will be completed in the required OMES format and attached to the specifications and completed evaluation matrix.
- vii. ODOC Procurement will then process the solicitation internally.
- viii. All communications concerning the solicitation will be routed through ODOC Procurement during the solicitation process.

- ix. Once responses are received, copies will be sent to the end user for the evaluation process after completion and return to ODOC Procurement of the Conflict of Interest and non-disclosure Statement for Evaluation Team form. ODOC Procurement will coordinate the evaluation process ensuring that all required documentation is completed.
- x. The award recommendation will be sent to ODOC Procurement for their review and approval.
- xi. Upon final approval, a purchase order will be completed.
- c. Required Documentation:
 - i. Pre-solicitation requirements:
 1. Internal ODOC Requisition
 2. Solicitation requirements
 3. Evaluation Matrix.
 4. Reference Questionnaire
 5. All registered Suppliers for the category and other sources
 6. If a service acquisition, either a Supplier Contract Certification form is completed, or service acquisition statement is included within PeopleSoft
 7. Applicable documentation if a special classification as identified in Appendix B.
 - ii. Evaluation Document requirements for solicitations:
 1. Completed evaluation matrix documentation
 2. Completed reference questionnaires.
 3. OMES Conflict of Interest and Nondisclosure Statement for Evaluation Team

1.1.1.17 74 O.S. § 85.45j. Sole Source or Sole Brand Acquisition

Pursuant to the provisions of this section, an acquisition may be exempt from competitive bidding procedures as a sole source or sole brand acquisition.

A court order requiring the purchase of specific products or services but which does not specify a brand or supplier shall not substitute for the certification required by this subsection or otherwise invalidate the acquisition procedures required pursuant to The Oklahoma Central Purchasing Act.

Any chief administrative officer of a state agency affirming the certification required by this subsection who knows the information to be false shall be deemed guilty of perjury and upon conviction shall be punished by fine or by imprisonment or both fine and imprisonment pursuant to law. Upon conviction or upon entering a plea of nolo contendere pursuant to this paragraph, the chief administrative officer shall immediately forfeit his or her position and shall be ineligible for appointment to or employment in the state service for a period of five (5) years after entering a plea of nolo contendere or being convicted.

Upon a determination by the Director of the Office of Management and Enterprise Services that there are reasonable grounds to believe that a violation of this subsection has occurred, the Director shall send findings to the Attorney General that support the determination. The Attorney

General shall review the findings and determine whether to investigate or prosecute the person.

If the acquisition's purchase price is such that the state agency is required to submit a requisition to the State Purchasing Director, the State Purchasing Director shall approve or deny the requisition for a sole source or sole brand acquisition. Prior to approving a requisition pursuant to this paragraph, the State Purchasing Director shall document reasons a sole source or sole brand purchase is necessary and shall retain a written record for three (3) fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was made.

For sole source or sole brand acquisitions exceeding Five Thousand Dollars (\$5,000.00) and not requiring submission of a requisition to the State Purchasing Director, the state agency's certified procurement officer shall document reasons a sole source or sole brand acquisition is necessary and shall retain a written record for three (3) fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was made.

The chief administrative officer of each state agency shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Five Thousand Dollars (\$5,000.00) executed by the state agency in the preceding month. The report shall indicate whether requisitions for sole source and sole brand acquisitions were disapproved or modified by the State Purchasing Director and information the State Purchasing Director requires.

The State Purchasing Director shall electronically provide to the Office of Management and Enterprise Services the information received pursuant to paragraph 8 of this subsection in machine-readable format and in the form the Office of Management and Enterprise Services requires.

By the fifteenth day of each month, or the first working day thereafter, the Office of Management and Enterprise Services shall provide a report from the information received pursuant to this section to:

- The Speaker of the House of Representatives and the President Pro Tempore of the Senate;*
- The Majority and Minority Leaders of both the House of Representatives and the Senate;*
- The Chair and Vice-chair of the Appropriations and Budget Committee of the House of Representatives and the Appropriations Committee of the Senate; and*
- Any member of the Legislature requesting the report.*

The report shall detail all sole source and sole brand acquisitions by state agencies for the month prior to the month preceding the submission of the report. The report shall be titled "Monthly Sole Source and Sole Brand Contracting Report of Oklahoma State Agencies" and indicate the time period of the report. The report shall be provided in physical form unless the requesting person specifies the electronic version. The report shall be signed by the Director of the Office of Management and Enterprise Services or the Director's designee. The report shall be in columnar database format and shall include at least the following fields of information: state agency number; state agency name; date created by the Office of Management and Enterprise Services for the requisition; date of either approval or disapproval of the requisition; if disapproved, the reason why such contract was disapproved; estimated amount of the requisition; purchase order

amount; purchase order number; actual business name of supplier; supplier federal employer identification number; contact person; and the commodity classification listing at the appropriate level to distinguish between similar acquisitions. Information required by this subsection shall be reported and maintained on each report through the next reporting period after an acquisition is made. The applicable data in the fields of information specified in this subsection shall be listed even if the state agency requisition is disapproved.

The Office of Management and Enterprise Services shall maintain electronic historic data or any other data received pursuant to this section for at least two (2) years.

By August 15 of each year, from the data received pursuant to this section, the Office of Management and Enterprise Services shall complete and submit a report detailing the number of sole source or sole brand contracts issued by each state agency and a list of the business names of the suppliers who received sole source or sole brand awards during the previous fiscal year and if more than one such award, the number of awards so executed.

ODOC Internal Policy:

8. Sole source acquisitions

- a. Definition: An acquisition may be exempt from competitive bidding procedures as a sole source or sole brand acquisition. (Title 74 O.S. § 85.45j)
- b. Process:
 - i. End user DR Programs Planner and Programs Representative identifies a need that is only available through a sole source or sole brand acquisition.
 - ii. An internal ODOC requisition is prepared by the end user citing:
 1. The specific need and the requirements for the acquisition
 2. The sole source supplier or possible suppliers if the acquisition is determined through research to be limited to a specific brand
 3. The funding source and availability
 4. The projected budget.
 5. Applicable terms and conditions
 - iii. All documentation is attached to the requisition. Sole source terms are to be added. A Sole Source Certification ready for authorized signature and completion should be attached
 - iv. The requisition routed through the appropriate division and agency approval levels.
 1. Must go through the Secretary of Commerce or their designee for the Sole Source Certification signature
 2. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.
 - v. Submission to ODOC Procurement where:
 1. The requisition is reviewed for completeness and applicability
 2. It is entered into purchasing software system
 3. If the acquisition is under \$50,000:
 - a. Signature of the ODOC Procurement Director is required
 - b. Disbursement of the purchase order to the supplier and end user.
 4. If the acquisition is over \$50,000
 - a. A PeopleSoft requisition is completed, and all documentation sent to OMES Central Purchasing for purchase order processing.
 - b. Upon completion of the purchase order, OMES Central

Purchasing will send a copy to ODOC Procurement and the supplier.

- c. ODOC Procurement will send a copy of the purchase order to the end user.

c. Required Forms:

- i. Requisition for the acquisition.
- ii. Sole Source Certification and Terms
- iii. Required contract specific documentation
- iv. Documentation for special purchases as outlined in Appendix B
- v. Purchase order

§ 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

1.1.1.18 74 O.S. § 85.4a - Oklahoma Minority Business Enterprise Assistance Act

It is recognized by this state that the preservation and expansion of the American economic system of private enterprise is through free competition, but it is also recognized that the security and well-being brought about by such competition cannot be realized unless the actual and potential capacity of minority business enterprises is encouraged and developed. Therefore, it is the intent of the Legislature that the state ensure that minority business enterprises are not underrepresented in the area of procurement of state contracts for construction, services, equipment and goods. It is further the intent that this state provide for the aggressive solicitation of minority business enterprises, provide a feasibility study on a Small Business Surety Bond Guaranty Program, provide other programs targeted for assisting minority business enterprises in qualifying for state bids, and establish a percentage preference bid program for minority business enterprises who desire to participate in such program.

ODOC Internal Policy:

ODOC DR Staff DR Programs Planner and Programs Representative will request that all solicitations for procurement of goods and services include all certified women-owned and minority businesses within the state of Oklahoma. DR Staff will request that OMES Central Purchasing include such lists from ODOC's own certified lists. If such lists cannot be obtained by OMES, DR Staff will contact ODOC's Business Department to obtain such lists and request OMES add them to the vendor lists. Information on ODOC's certification of women and minority owned businesses can be found here:

<https://www.okcommerce.gov/doing-business/business-services/women-owned-business-certifications/>

<https://www.okcommerce.gov/wp-content/uploads/Minority-Business-Certification-Programs.pdf>

1.1.1.19 §200.322 Domestic Preferences for Procurement

74 O.S. § 85.17A: Bidding Preferences:

- 1. State agencies shall not discriminate against bidders from states or nations outside Oklahoma, except as provided by this section. State agencies shall reciprocate the bidding preference given by other states or nations to bidders domiciled in their jurisdictions for acquisitions pursuant to the Oklahoma Central Purchasing Act. The State Purchasing Director shall annually prepare and distribute to certified procurement officers a schedule providing which states give bidders in their states a preference and the extent of the preference. This schedule shall be used by state agencies in evaluating bids.*
- 2. For purposes of awarding contracts state agencies shall:*
 - 1. Give preference to goods and services that have been manufactured or produced in this state if the price, fitness, availability and quality are otherwise equal;*
 - 2. Give preference to goods and services from another state over foreign goods or services if goods or services manufactured or produced in this state are not equal in price, fitness, availability, or quality; and*
 - 3. Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.*

ODOC Internal Policy:

While the standard procedure for the State of Oklahoma is to preference in-state bidders and disabled veteran businesses, as well as reciprocate the bidding preference given by other states or nations to bidders domiciled in their jurisdictions and add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides, **as cited in 74 O.S. § 85.17A and 74 OS § 85.44E, none of these rules shall be followed by the State when using CDBG-DR funds.** While these rules are common for other projects and programs, they cannot be followed for CDBG-DR to ensure full and open competition. The CDBG-DR Staff DR Programs Planner and Programs Representative will follow the scoring matrix created by the OMES Central Purchasing Officer to adhere to all Federal guidelines and such matrices will exclude all such State regulations that do not allow for full and open competition. CPO's will create the scoring matrices in order to give adequate preference to goods or services produced within the United States but will not give preference to Oklahoma bidders, disabled veteran businesses, or reciprocate any bidding preference by another state for bidders domiciled in their jurisdictions, nor add a percent increase to any nonresident bidder. 74 O.S. § 85.14 allows for Federal rules and regulations to govern when federal funds are granted.

1.1.1.20 §200.323 Procurement of recovered materials.

OAC 260:85-1-4 - Recycled Products Procurement

Purchase of recycled products. Each state public entity shall procure products which are manufactured with recycled materials, and products which are recyclable and/or durable, to meet or exceed the legislative intent, requirements, and goals of the Act.

Reporting of purchases of recycled products. Each state public entity shall submit a report to the Director by December 31 of each year. This report shall describe the results of its procurement of recycled paper products and other products manufactured with recycled materials over the past

fiscal year. The report shall be in a format determined by the Office.

Assistance in procurement objectives. The Office shall provide assistance to state public entities in the achievement of procurement objectives in their recycling programs.

Procurement specifications for recycled materials. Each state public entity shall use procurement specifications to require, to the greatest extent practicable, that a product and its packaging or container contain recycled materials and that the product and its packaging or container be recyclable.

Product and packaging specifications shall require the use of post-consumer materials to the greatest extent practicable without jeopardizing the intended end use of the product.

In writing specifications and selecting products for procurement, life cycle costs shall be part of the evaluation criteria when the costs of waste disposal or the durability and reusability of a product may be significant.

A state public entity may determine that, for technical reasons, and for a particular end use, a product containing recycled materials will not meet reasonable performance standards, and may therefore declare the purchase of a product manufactured with recycled materials to be unpracticable. Such a determination shall be documented and based solely upon technical performance information related to a specific item, and not to a grade or type of product. This documentation may be requested for review by the Office.

Each state public entity shall reduce the generation of solid waste at its source, whenever practicable, by minimizing the purchase of single-use, disposable products and requiring the purchase of durable products which can be reused.

Each state public entity shall, whenever practicable, purchase only office paper, photocopier paper, printer paper, and printed paper products which are not coated with plastic, clay, or other material used to create a glossy finish.

Each state public entity shall take reasonable steps to minimize the procurement of colored paper products. If color is necessary for a particular use, full consideration shall be given to the use of white paper printed with colored, soy- based ink.

Declaration of vendors of percentage of recycled materials in products. State public entities shall require vendors to declare the minimum, if not exact, percentage of recycled materials content in the products offered, including both the post-consumer and total recycled materials content, regardless of whether the product meets the percentage of recycled materials specified for that product.

Certification by vendor of recycled content claim. The vendor of any product for which a recycled content claim is made must both possess and rely upon a reasonable basis for the claim and must be able, upon request by the Office, to certify and demonstrate this claim. Any fraud or deception in the representation of recycled materials content may result in cancellation of the contract and

the removal or suspension of the vendor from the bidders list pursuant to OAC 260:115-3-21.

Preferences for recycled materials. If several products manufactured with recycled materials are being considered for purchase, and if all cost and quality considerations are comparable, preference shall be given to the product with the highest content of post-consumer material. If this measure fails to identify the more preferable product, the award shall go to the product with the highest content of total recycled materials.

Preferences by public entities. Each state public entity responsible for the maintenance of public lands in this state shall, to the greatest extent practicable and consistent with sound environmental practices, give preference to the use of compost materials in land maintenance activities which are to be paid for by public funds.

Price preference on bids. When accepting bids for purchases of supplies, equipment and materials, the Central Purchasing Division of the Office of Management and Enterprise Services and each state public entity shall extend price preferences to products manufactured with recycled materials whenever the Director determines that such products are unable to be price competitive with products of comparable grade and quality manufactured from virgin materials.

Those products manufactured with at least the minimum content level of recycled materials as established by the Federal Environmental Protection Agency (EPA) shall receive a price preference not to exceed a five percent differential.

A copy of the EPA specified content requirements and a list of products meeting the requirements will be maintained as a public record by the Office.

A product which contains recycled materials but falls short of the EPA minimum requirements may receive a price preference if no other product is bid or offered which meets the EPA requirements.

Price preferences allowed pursuant to this section shall not be combined with other price preferences or differentials. In response to product market conditions, the Director may temporarily increase, reduce, or eliminate any recycled product price preference.

Exemptions. No state public entity may be exempted from complying with the legislative intent, requirements, and goals of the Act; however, the Director may grant temporary exemptions from compliance with the rules in 260:85-1-4 due to lack of market availability or economic feasibility. All requests for exemption must be made in writing and must be accompanied by documentation supporting the need for such an exemption. Any exemption granted shall be in effect for no longer than one year.

ODOC Internal Policy:

CDBG-DR Staff Programs Planner and Programs Representative will do its due diligence in procuring recycled materials. DR Staff will request that ODOC's CPO includes vendors that sell recycled materials on all vendor lists.

1.1.1.21 §200.324 Contract cost and price - performance of a cost or price analysis.

OAC 260:115-7-23 - State agency acquisitions processed by the Central Purchasing Division
A state agency submitting requisitions to the Central Purchasing Division pursuant to 260:115-5-11 shall comply with this section. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

Forms. State agencies shall use forms for requisitions provided or approved by the State Purchasing Director. Services requisition requirements. If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract, which includes applicable statutory language required by the Oklahoma Central Purchasing Act, signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

Evaluation Criteria. An agency shall include written criteria necessary to evaluate a supplier's response to a solicitation such as technical scope, cost, experience, references etc.

Additional requisition information. The State Purchasing Director may require a state agency to submit additional information with a requisition.

Requisition acceptance or rejection. The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify the state agency if the State Purchasing Director rejects a requisition.

Competitive bid evaluation. The State Purchasing Director shall evaluate bids and may request assistance of the state agency.

Competitive bid award. The State Purchasing Director shall award a contract, as the solicitation specifies, to the responsible bidder that provides the lowest and best, or best value bid.

State agency notification. The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.

ODOC Internal Policy:

ODOC DR Staff Programs Planner and Programs Representative have established a baseline for cost reasonableness. DR Staff will utilize the following criteria to determine whether a cost is reasonable:

Identifying Cost Reasonableness:

- Check the accuracy of the prices submitted;
- Evaluate the necessity of the proposed cost items;
- Evaluate the separate elements of cost;

- Review proposal for potential cost overruns, taking into consideration the vendor's past performance;
- Compare proposed prices to Sub-recipient's independent cost estimate; and
- Compare proposed prices to previous cost estimates or actual costs incurred for similar work

DR Staff will evaluate cost reasonableness and request such evaluation criteria is included in the bid evaluations.

§200.324 Contract cost and price – negotiation of profit and cost plus a percentage of cost must not be used.

1.1.1.22 OAC 260:115-7-34 - Contract negotiation

Negotiation. The State Purchasing Director may negotiate contracts by following the rules for negotiation in this section. Negotiations may be conducted with one or more suppliers. A state agency may conduct negotiations for acquisitions within the state agency's approved dollar threshold and shall follow the rules for negotiation in this section.

Negotiation team. A state agency may request assistance from the State Purchasing Director when conducting negotiations, which may include a request for the designation of a negotiator or negotiation team.

The State Purchasing Director or designee shall serve as the lead negotiator for a team when negotiations are being conducted for solicitations issued by Central Purchasing.

Negotiation process. The lead negotiator shall notify suppliers of the date and time for negotiations. The lead negotiator shall request the supplier provide a list of the individuals who will attend the negotiation and who have full authority to bind the supplier in the negotiation process. The lead negotiator shall determine the location and manner of negotiation.

The negotiation team shall develop an agenda with the lead negotiator and submit the agenda to all participants of the negotiation process. The agenda shall set forth the key areas in the solicitation, which require negotiation. The lead negotiator may require suppliers to submit a best and final offer.

The lead negotiator shall prepare a summary that shall document the following:

- *An overview setting forth the solicitation number,*
- *names and titles of participants,*
- *description of the solicitation,*
- *date and location of the negotiation, and purpose of the negotiation; and*
- *a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.*

A summary created under these rules shall become a part of the contract file retained.

ODOC Internal Policy:

In the event that a negotiation is necessary, DR Staff Programs Planner and Programs Representative will request their Community Development Division Director request a contract negotiation by the State Purchasing Director. The Purchasing Director will choose the individuals that will sit on the negotiation team with the Director as the negotiation lead. The lead negotiator will summarize the negotiation and all other necessary information after the completion of the negotiation. The Certified Purchasing Officer will keep all negotiation files on ODOC's electronic drive.

1.1.1.23 §200.326 Bonding requirements.

61 O.S. § 1

A. Prior to an award of a contract exceeding Fifty Thousand Dollars (\$50,000.00) for construction or repair of a public or private building, structure, or improvement on public real property, the person that receives the award shall:

- 1. Furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract; or*
- 2. Cause an irrevocable letter of credit, containing terms the Office of Management and Enterprise Services prescribes, to be issued for the benefit of the state by a financial institution insured by the Federal Deposit Insurance Corporation in a sum not less than the total sum of the contract.*

B. The bond or irrevocable letter of credit shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness the contractor incurs for the contractor's subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of and parts for equipment the contract requires the contractor to furnish.

C. For a contract not exceeding Fifty Thousand Dollars (\$50,000.00), in lieu of a bond or irrevocable letter of credit, the contractor shall submit an affidavit of the payment of all indebtedness incurred by the contractor, the contractor's subcontractors, and all suppliers of labor, material, rented machinery or equipment, and repair of and parts for equipment used or consumed in the performance of the contract. The execution of the affidavit with knowledge that any of the contents of the affidavit are false, upon conviction, shall constitute perjury, punishable as provided for by law.

ODOC Internal Policy:

ODOC's Certified Purchasing Officer will ensure that all bonding requirements are met and all electronic files on such bonds are preserved.

1.1.1.24 §200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix

II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

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 currently set at \$250,000, 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, 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.

1.1.2 OAC 260:115-9-9 - Contract termination

Reasons for contract termination. The State Purchasing Director may terminate a contract in its entirety or any portion thereof, between a supplier and a state agency if:

- A supplier fails to post, or allows to expire, a bid bond, performance bond, or other type of surety bond the solicitation specifies;
- A supplier fails to deliver an acquisition pursuant to the contract;
- A supplier fails timely to replace at the supplier's expense, acquisitions that fail to meet the requirements of the contract or have latent defects;
- A supplier misrepresents the supplier's ability to provide an acquisition;
- A supplier's financial or other condition, including but not limited to, bankruptcy or other evidence of insolvency which may affect the supplier's ability to perform;
- A supplier commits an unlawful act or an act that impairs the supplier's ability to perform;
- A supplier commits an act that could result in the supplier's suspension or debarment from the Supplier List;
- The State Purchasing Director determines that an administrative error occurred prior to contract performance; or
- If sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements.

Supplier responsible for damages. If the State Purchasing Director terminates a contract between a supplier and a state agency, the Attorney General of the State of Oklahoma, the State Purchasing Director, or the requisitioning agency, may seek damages from the supplier. Damages may include additional cost to obtain the acquisition from another supplier, the cost of re-bidding the acquisition and the cost of acquisition receipt delay.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all

contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). 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), as supplemented by Department of Labor regulations (29 CFR 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 (40 U.S.C. 3701-3708). 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 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 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 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 (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, “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 (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), 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 (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 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 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR 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.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 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. 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 Procurement of recovered materials.

2 CFR 570.503:

ODOC is required to follow the below policies before disbursing funds to subrecipients. These requirements are further outlined in ODOC’s CDBG-DR contracts with subrecipients Part I & II. All requirements that are not outlined in Parts I & II will be detailed in Contract Part III. This contract part details specific terms and requirements that are specific to the subrecipient such as their schedule for completing work:

(a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) Statement of work. The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

(2) Records and reports. The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

(3) Program income. The agreement shall include the program income requirements set forth in § 570.504(c). The agreement shall also specify that, at the end of the program year, the grantee may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

(4) Uniform requirements. The agreement shall require the subrecipient to comply with applicable uniform requirements, as described in § 570.502.

(5) Other program requirements. The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart K of these regulations, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at § 570.604; and

(ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR part 52.

(6) Suspension and termination. The agreement shall set forth remedies for noncompliance and provisions on termination in accordance with 2 CFR part 200, subpart D.

(7) Reversion of assets. The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 is either:

(i) Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or

(ii) Not used in accordance with paragraph (b)(7)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

ODOC Internal Policy

ODOC DR Staff Programs Planner and Programs Representative will include all contract

provisions in all contracts. DR Staff and the Community Development Director will assume oversight of all contracts to ensure they include such provisions.

1.1.2.1.1 Attachments:

1.1.2.1.2 SECTION III-1 Sub Recipient Contract Template Part I & II

1.2.2. SUB-RECIPIENTS:

Subrecipients are State Agencies, Counties, Cities, eligible non-profit organizations, and Councils of Government (COG). Counties are required to follow the procedures as defined in O. S. 19, et.al. County purchasing practices in Oklahoma are regulated by Sections 1500 through 1505 in Title 19, Chapter 33, “County Purchasing Procedures” of the Oklahoma Statutes, commonly referred to as the County Purchasing Act. These practices are also regulated by the “Public Competitive Bidding Act” (PCBA) in Title 61, Sections 101 through 138 in the Oklahoma Statutes. Cities and Towns are required to adopt and follow their own procurement procedures as established by local ordinance for the purchase of all goods and services.

All subrecipients will be required to follow 2 CFR 200.318-326 in their procurement of goods and services with CDBG-DR funds. Subrecipients will also follow their own procurement policies and procedures and in the case of a conflict between the two policies, subrecipients will follow whichever is more restrictive. All subrecipients must submit a copy of their procurement policies and procedures at the time of application. ODOC/CD staff will ensure that all policies and procedures adhere to 2 CFR 200.318-326. Procurement policies and procedures will be checked against an application checklist based on the Monitoring Checklist when subrecipients apply for CDBG-DR funds. CDBG-DR Staff Programs Planner and Programs Representative will assume all oversight of process. This checklist will include all procurement policies that the subrecipient is required to follow for 2 CFR 200.318-326 and State regulations, if applicable. Examples include vendor lists, small purchase quotes, types of contracts used, meeting minutes during bid openings, justification for the acceptance and denial of bids, minority and women owned business solicitations, and recycled material solicitations. If any policies do not meet State or Federal guidelines, subrecipients will be required to revise policies and procedures before receiving any CDBG-DR funds.

Subrecipients will also be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients to ensure that subrecipients adhere to 2 CFR Part 200 and their own policies throughout the contract period.

The following sections will outline the 2 CFR 200.318-326 requirements and how City, Counties, and tribal governments will meet the federal procurement standards as well as how ODOC will monitor compliance with the requirement. In Oklahoma, city and county governments must follow the Competitive Bidding Act of 1974. It is a broad procurement guide that defines a public agencies very broadly as "Public agency" means the State of Oklahoma, and any county, city, town, school district or other political subdivision of the state, any public trust, any public entity specifically created by the statutes of the State of Oklahoma or as a result of statutory authorization therefor, and any department, agency, board, bureau, commission, committee or authority of any of the foregoing public entities.

When procurement procedures are more lenient or are not regulated by state or local laws, the 2 CFR 200.318-326 requirements will be followed. State code allows for:

§ 136. Conflicts with Federal Rules and Regulations - Laws Governing In the event any provision of this act conflicts with or is inconsistent in any manner with the rules and regulations of any agency of the United States Government, which is providing all or any portion of the funds used to finance any public construction contract, the rules and regulations of said agency of the United States Government shall supersede and take precedence over such portion or portions of this act in conflict or inconsistent therewith, it being the intent of the Legislature to secure all of the benefits available to the people of the State of Oklahoma from federally assisted programs.

2 CFR §200.318-326

§200.318 General procurement standards.

- (a) The non-Federal entity must use its **own documented procurement procedures** which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (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 mean 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**.
- (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 §200.213 Suspension and debarment.
- (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.

1.2.1 State Requirements for Cities and Counties:

Competitive Bidding Act of 1974 section 114. Conflict of Interest The chief administrative officer and members of the governing body of the awarding public agency authorizing or awarding or supervising the execution of a public construction contract, and their relatives within the third degree of consanguinity or affinity, are forbidden to be interested directly or indirectly through stock ownership, partnership interest or otherwise in any Laws through 2011 Legislative Session Page 21 of 42 Title 61. Public Buildings and Public Works such contract. Contracts entered into in violation of this section shall be void. Persons willfully violating this section shall be guilty of a felony and shall be subject to removal from office.

§ 103.2. Political Subdivision May Appoint Purchasing Agent The governing body of any political subdivision of this state may duly appoint as its agent any individual or individual of a legal entity, with whom the political subdivision has duly entered Laws through 2011 Legislative Session Page 16 of 42 Title 61. Public Buildings and Public Works into a public contract pursuant to law, to make purchases necessary for carrying out the public contract.

§ 118. Prequalification of Bidders A. In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work pursuant to this section does not constitute a license. Except as provided in subsection B of this section, prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts as set forth in Section 104 of this title. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential. B. The Oklahoma Transportation Commission and the Oklahoma Transportation Authority may establish a system for prequalifying prospective bidders on construction and maintenance contracts to be awarded by the Commission or Authority. The Commission and the Authority shall be the sole judge of the qualifications of prospective bidders and shall ascertain, to their Laws through 2011 Legislative Session Page 22 of 42 Title 61. Public Buildings and Public Works exclusive satisfaction, the qualifications of each prequalified bidder. Any contractor or subcontractor prequalified as of the effective date of this act performing signing, highway lighting, or traffic signal installation or maintenance for the Oklahoma Department of Transportation or the Oklahoma Transportation Authority shall be allowed to continue to bid and perform such work without obtaining any additional license from this state or any political subdivision of this state. However, no contractor or subcontractor may transfer, convey or assign this exemption to any other person or entity.

1.2.2 In addition there are State Requirements for Counties:

O.S. § 19-1500 county purchasing agent

A. The county clerk of each county or an employee of that office so designated by the county clerk shall be the **county purchasing agent**. Provided, in counties having a county budget board created pursuant to the County Budget Act, the board may, upon an affirmative vote of a majority of all the board members then in office, appoint a county purchasing agent. In the event the board does not appoint a county purchasing agent, the county clerk or an employee of that office so designated by the county clerk shall be the county purchasing agent. The county purchasing agent shall be under the general supervision and direction of the appointing authority.

B. All persons serving as county purchasing agents on July 1, 1989, shall attend training seminars sponsored by the Oklahoma Cooperative Extension Service prior to July 1, 1990. The training seminars will cover the terminology, concepts, customs and practices of the sellers of supplies, materials, equipment and information technology and telecommunications goods commonly purchased for the county. **All county purchasing agents appointed after July 1, 1989, shall attend the training seminars within one (1) year of their appointment.**

O.S. § 19-1500.1 Duties of a purchasing agent

A. Except as otherwise provided by Section 1500 et seq. of this title, the county purchasing agent shall have the authority to develop, implement and promote policies and procedures that allow the procurement of materials and equipment through contracts that are flexible, value based and are in the best interests of the state and its political subdivisions.

O.S. § 19-1503 Receiving officers

Each county officer shall designate **two (2) employees to act as receiving officers for their departments**. A written designation of such employees shall be filed with the county clerk and shall be entered in the minutes of the board of county commissioners.

1.2.3 Tribal Requirements for these issues:

Tribal Nations are required to follow 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

1.2.4 Other Subrecipients:

All other subrecipients will be required to adopt and follow 2 CFR 200.318-326 and their own procurement policies and procedures, whichever is more restrictive.

Subrecipients Step-by-Step Instructions (These should be detailed in Procurement Policies and Procedures:

1. Oversight. Sub-recipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
 - If a county subrecipient, must detail oversight of county purchasing agent and receiving officer.
2. Standards of Conduct. Every Sub-recipient must maintain written **procedures covering conflicts of interest** and governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award and administration of vendor contracts, the award of CDBG-DR assistance, or the management of federally-assisted or purchased property. The Sub-recipient must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489 (g)(h).
 - For the procurement of goods and services, no employee, officer, or agent of the Sub-recipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/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 a tangible personal benefit from a firm considered for a vendor contract. (24 CFR 570.489(g), 2 CFR 200.318(c)(1));
 - The officers, employees, or agents of the Sub-recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts;

The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Sub-recipient.

- If a county subrecipient, must show there is no COI with county purchasing agent, elected officials, other county employees, and receiving officers; or
- If a city or town subrecipient, must show there is no COI with elected officials, the appointed purchasing agent, and city employees.

3. Avoidance of Unnecessary or Duplicative Items. Sub-recipients' procurement procedures must **avoid the acquisition of unnecessary or duplicative items** by giving consideration to consolidating or breaking out procurements to obtain a more economical purchase.
4. Value Engineering Clauses. Sub-recipients are encouraged to use **value engineering clauses** in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
5. Awarding to Responsible Contractors. Sub-recipients must award **contracts only to responsible contractors** possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
6. Record Keeping. Sub-recipients must maintain records sufficient to detail the history of procurement. These records shall include, but are not 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
7. Time and Materials Contracts. Sub-recipients may only use a **time and materials type contract after a determination is made 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 contracts are the sum of:
 - The actual cost of materials; and
 - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit
8. Dispute Resolution. Sub-recipients 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 Sub-recipients of any contractual responsibilities under its contracts.

The subrecipients will submit to the department:

All subrecipients will be required to submit their Procurement Policies and Procedures at the time of application for CDBG-DR funds. All policies and procedures must adhere to Federal and State guidelines outlined above.

§200.319 Competition.

- (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. 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.
- (b) 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.
- (c) 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 offers’ must fulfill and all other factors to be used in evaluating bids or proposals.

(d) 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

1.2.5 State Requirements for Cities and counties:

The Competitive Bidding Act of 1974 and the County Purchasing Procedures do not have specific requirements for competition as defined in 2 CFR 200.319 except pre-qualification of bidders. Therefore, cities and counties will comply with 2 CFR 200.319.

§ 118. Prequalification of Bidders A. In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work pursuant to this section does not constitute a license. Except as provided in subsection B of this section, prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts as set forth in Section 104 of this title. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

Tribal Requirements for these issues:

Tribal Nations are required to follow 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Subrecipients Will Follow:

Sub-recipients must have written procedures for procurement transactions that ensure all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- Identify all requirements which the offerors must fulfill;
 - If the subrecipient is a city, town or county, prequalification requirements must also be equally and uniformly known, if the subrecipient chooses to have prequalifications for bidders.
- Identify all other factors to be used in evaluating bids or proposals; and
- Are conducted in a manner providing full and open competition;
 - In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or request for proposals must be excluded from competing for such procurements
 - Some situations considered to be restrictive of competition include, but are not limited to, the following:
 - Placing unreasonable requirements on firms in order for them to qualify to do business;
 - Requiring unnecessary experience and excessive bonding;
 - Noncompetitive pricing practices between firms or between affiliated companies;
 - Noncompetitive contracts to consultants that are on retainer contracts;
 - Organizational conflicts of interest;

- Specifying only ‘brand name’ products instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process

When using prequalified lists, Sub-recipients must ensure that all 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, Sub-recipients must not preclude potential bidders from qualifying during the solicitation period.

Cost and Price Analysis

For procurement actions in excess of the Federal Simplified Acquisition Threshold, Sub-recipients must perform a cost or price analysis. This requirement also applies to contract modifications and change orders. Note that Sub-recipients must consider price reasonableness for micro-purchases as well as small purchases.

2. Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services and should be documented in the procurement file. In conducting a proper price analysis Sub-recipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison. When comparing prices, Sub-recipients should review for significant discrepancies to determine if the goods or services are comparable.

3. Cost Analysis

Sub-recipients will utilize this process to help determine if proposed costs are allowable, reasonable and allocable as described in 2 CFR 200.403-405. Prior to receiving bids or proposals, Sub-recipients should establish an independent estimate for the goods or services to be procured. When conducting a cost analysis, Sub-recipients must review and evaluate the separate elements of cost and negotiate profit in a received proposal.

A cost analysis is required when price competition does not exist. The following are examples of when cost analysis is used:

- The competitive proposal method is used;

- The sole source procurement method is used;
- Only one bid is received during a sealed bid procurement; and
- A contract modification is requested that changes the price or total estimated cost (either upwards or downwards)

4. Conducting a price and cost analysis:

- Check the accuracy of the prices submitted;
- Evaluate the necessity of the proposed cost items;
- Evaluate the separate elements of cost;
- Review proposal for potential cost overruns, taking into consideration the vendor's

past performance;

- Compare proposed prices to Sub-recipient's independent cost estimate; and
- Compare proposed prices to previous cost estimates or actual costs incurred for similar work

5. Profit Negotiation

Sub-recipients 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 performed¹². Per HUD's "[Quick Guide To Cost And Price Analysis](#)," all of the following criteria must be considered when negotiating profit:

- Complexity of the work to be performed;
- Amount of risk the contractor may be exposed to (performance and/or cost);
- Contractor's investment and resources dedicated to performing the contract (labor, oversight, etc.);
- Use of subcontractors by the prime contractor and the nature of the work to be performed;
- Quality of the contractor's past performance for similar work; and
- Industry profit rates in the surrounding area for similar work

Sub-recipients are responsible for maintaining records and any documentation used to support the profit negotiation.

Note: Sub-recipients must ensure that the contract does not constitute a prohibited cost-plus-a-percentage-of-cost or percentage-of-construction-cost contract.

Contracting with Historically Underutilized Businesses (HUB), Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Firms

Sub-recipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, and labor surplus firms are notified of bidding opportunities and utilized whenever possible. Affirmative steps must include the following:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 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;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- 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
- Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in parts (1)-(5) above

Suspension and Debarment

Sub-recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Sub-recipients must ensure, prior to award, that all contractors receiving CDBG-DR funds have met all the eligibility requirements outlined in state and federal law. At a minimum, the following steps must be taken to ensure contractor eligibility for all services procured.

- Contractors: All contractors, including professional consulting and engineering firms, must be cleared via a search of the Federal System of Award Management ('SAM') to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: <https://sam.gov/SAM/>
- Subcontractors: Sub-recipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.

It should be noted that if any of the above listed parties are deemed ineligible to receive CDBG-DR funds after award of contract, the contract will be immediately terminated. The matter must be reported to the ODOC Community Development staff for further action.

§200.320 Methods of procurement

The [non-Federal entity](#) must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 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, 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). 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) and (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](#). 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](#) 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 \(a\)\(1\)\(iv\)](#) 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](#) or [paragraph \(c\)](#) 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 through 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 \(a\)\(1\)](#) 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.

State Requirements for Counties and Cities:

The Competitive bidding act of 1974 is more restrictive when it comes to price thresholds for sealed bidding. Therefore, cities, towns, and counties will follow the thresholds defined in the Competitive Bidding Act and all other subrecipients will follow 2 CFR 200.320 unless they have more restrictive thresholds within their agencies.

Tribal Requirements for these issues:

Tribal Nations are required to follow 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Subrecipients Will Follow:

2 CFR 200.320 Thresholds and Definitions for Subrecipients (Note that thresholds are different for Cities, Towns, and Counties):

Micro-Purchases

The micro-purchase method is used for the acquisition of supplies or services which do not exceed the micro-purchase threshold and must be distributed equitable among qualified suppliers. The micro-purchase threshold was increased from \$3,500 to \$10,000 on July 2, 2020 (85 FR 40064).

The micro-purchase threshold is \$10,000, except for:

- Procurement of construction services subject to Davis Bacon requirements, the threshold is \$2,000;
- Procurement of services subject to Service Contract Labor Standards, the threshold is

\$2,500

Micro-purchases may be awarded without soliciting competitive quotations if the Sub-recipient considers the price to be reasonable. However, documentation of the Sub-recipient's determination of reasonableness must be maintained for record-keeping requirements.

Small Purchases

The small purchase method is used for the acquisition of supplies or services greater than the micro-purchase threshold and less than or equal to the simple acquisition threshold. Small purchase procedures are relatively simple and do not require a formal solicitation for securing services, supplies, or other property.

The federal simple acquisition threshold is \$250,000 (increased from \$150,000 on July 2, 2020 [85 FR 40064]).

If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Documentation of the rate quotations must be maintained for record-keeping requirements.

Sealed Bids (Formal Advertisement)

Sealed bids, bids that 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 price. This is the preferred method for construction contracts.

Competitive Proposals

The procurement by competitive proposals technique 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. A Request for Proposal (RFP) is used when qualifications and price are used in evaluating proposals and is the preferred method for administrative services. A Request for Qualification (RFQ) is used to procure architectural or engineering professional services where qualifications are used in evaluating proposals and price is not used as a selection factor.

Noncompetitive Proposals (Sole Source)

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

- 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 federal awarding agency or pass through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of a number of sources, competition is determined inadequate

The following table outlines the five procurement methods used to procure materials, supplies, construction and services. **This table is applicable to all subrecipients but note that thresholds are different for certain entities.**

Procurement Type	Cost Reasonableness	Contract Type	Solicitation Method	Applications
Micro-Purchase	Price Analysis	Purchase Order Fixed Price	No solicitation required	Supplies Produced items Single-task service

Small Purchase	Price Analysis	Purchase Order Fixed Price	Quotations Submitted Bids	Supplies Produced items Single-task service
Sealed Bid (formal advertising)	Price Analysis Cost Analysis	Fixed Price	Submitted Bids	Construction items Produced or designed items
Competitive Proposals	Price Analysis Cost Analysis	Cost Reimbursement Fixed Price Time & Materials	Submitted Proposals	Professional services Multi-task services Designed items
Noncompetitive Proposals	Cost Analysis	Cost Reimbursement Fixed Price Time & Materials	Submitted Proposals	Produced items Single task service Professional services Multi-task services Designed Item

Micro-Purchase Procedures

Prior to utilizing the Micro-Purchase method of procurement, **Sub-recipients should plan and document how many products or services will be required.** In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the micro-purchase threshold. For micro-purchases for construction services in excess of \$2,000, Sub-recipients must adhere to the Davis-Bacon and Related Acts.

To the extent practicable, Sub-recipients must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Sub-recipient considers the price to be reasonable by conducting a price analysis as outlined above. Prior to issuing a purchase order under this method, Sub-recipients must verify that the vendor is not debarred under the System for Award Management.

- For Cities, Towns, and Counties, construction contracts for less than Five Thousand Dollars (\$5,000.00) may be **negotiated with a qualified contractor.** Work may be commenced in accordance with the purchasing policies of the public agency (61 O.S. § 103)

- For other subrecipients, the threshold is the SAT: \$10,000 (unless subrecipient policies are more restrictive).

Small Purchase Procedures

Prior to utilizing the Small Purchase method of procurement, Sub-recipients should consider the aggregate cost of the goods or services. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed:

- \$50,000 for cities, towns, and counties; or
- The simplified acquisition threshold of \$250,000 for all other subrecipients (unless subrecipient policies are more restrictive).

Sub-recipients cannot use the small purchase procurement method to make separate, sequential, or component purchases of goods or services with the intent of avoiding the competitive bidding and competitive proposal requirements. This is both a Federal and State (61 O.S. § 131) Requirement. The State Penalty is as follows:

§ 131. Splitting of Contracts

No contract shall be split into partial contracts for the purpose of avoiding the requirements of this act. All such partial contracts shall be void. **Any person who knowingly violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.**

When seeking quotes, Sub-recipients must clearly explain to all vendors providing quotations that the information provided is being sought for informational purposes only and the request for quotation does not constitute a formal solicitation. Extra care must be given to avoid giving a vendor any competitive advantage in a future procurement initiative.

Step 1: Comply with Davis-Bacon Act requirements, if applicable

Sub-recipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction.

Step 2: Contact an adequate number of vendors (Neither State nor Federal Guidelines dictate the number of vendors)

Sub-recipients must document quotes received (**This will be a required submission to ODOC** for every procurement of goods and services using the Small Purchase Procedures). Quotations may be requested via telephone, fax, email, mail, or any other reasonable method. Sub-recipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible.

The Oklahoma Department of Commerce certifies Minority and Women owned businesses within the State. It should be noted which vendors are minority and women owned businesses on a subrecipients vendor lists, which will be cross-referenced with ODOC's business certifications. Note that it is a Federal law to take all necessary steps to assure that such businesses receive equal bidding opportunities and are utilized whenever possible.

Step 3: Award the contract.

Sub-recipients should conduct a price analysis and award to the lowest responsible bidder. If the Sub-recipient does not award the contract to the lowest bidder, the reasoning must be documented and in compliance with federal, state, and local regulations (This will also be a **required submission to ODOC** for every procurement of goods or services). Sub-recipients must verify that the vendor is not debarred under the System for Award Management.

Step 4: Execute the contract.

Sub-recipients must submit the documentation of bid quotes received, reasoning for acceptance or denial of a bid, and vendor lists to Report to ODOC CDBG-DR Programs Planner/Programs Representative/staff **within 30 days of executing a prime contract.**

Sealed Bid Procedures (Formal Advertisement)

Procurements for materials, equipment, and construction services with a total cost over the simple acquisition threshold must formally advertise for sealed bids. Procurement by sealed bids is the preferred method for procuring materials, equipment, and construction services if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;

- Two or more responsible bidders are willing and able to compete effectively for the business; and
- 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.

Step 1: Creation of Sealed Bid Packages

All sub-recipients must create a bid package, usually written by an architect or engineer and based off of prepared plans or working drawings, that provides a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project. This package must:

- Be sealed by an architect or engineer registered in the State of Oklahoma and, if the project falls under the jurisdiction of another state agency, approval is required prior to construction;
- For fire stations, garages, and/or buildings that will be accessible to the public once constructed, a certification that applicable standards of accessibility by the handicapped have been or will be satisfied must be executed and co-signed by a local jurisdictional official, filed in the contract documents file, and a copy must be sent to the State;
- Contain all properly obtained lands, rights-of-way, and easements necessary for carrying out the project;
- Contain processes and procedures in accordance with the provisions of the Uniform Relocation Act for the acquisition of land occurring during the project; and
- Contain all forms and contract provisions applicable to the project and required by federal and state laws and regulations

The base bid should include all components of the approved project and should not include any items which were not included in the approved applications or which have not

received subsequent approval. ODOC CDBG-DR Programs Planner/Programs Representative/staff approval should be received prior to awarding a bid that includes items not listed in an approved line item budget.

Note: For fixed price contracts with unit cost pricing, the bid specifications should delineate some type of item, estimated quality, unit price, and total cost.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

For all Cities, Towns, and Counties, all bid notices shall set forth the following information:

1. The character of the proposed public construction contract **in sufficient details that all bidders shall know exactly what their obligation will be**, either in the bid notice itself or by reference to bidding documents on file in the main office of the awarding public agency; and
2. **The name of the officer, agent or employee of the awarding public agency and the office location and address of such person**, from whom a complete set of bidding documents regarding such proposed contract may be obtained, together with the amount of the cost deposit required therefor, if any; and
3. The date, time and place of opening of the sealed bids; and
4. The name and office location and address of the office of the awarding public agency to whom the sealed bids should be submitted; and
5. Any additional information regarding such proposed contract deemed by the awarding public agency to be of beneficial interest to prospective bidders or the public (61 O.S. § 105).

For all Cities, Towns and Counties, at least one complete set of bidding documents regarding a proposed public construction contract **shall be on file in the main office** of the awarding public agency at least twenty (20) days prior to the date set for opening bids. The officer, agent or **employee of the awarding public agency designated in the bid notice shall have a sufficient number of complete sets of said bidding documents and shall provide a complete set of same to any prospective bidder, upon request**; provided, however, that the awarding public agency may require a reasonable deposit for each such set; provided, that such deposit shall not exceed the actual cost of duplicating or printing. The public agency may retain all or part of said deposit if so stated in the notice for bids. (61 O.S. § 106).

Step 2: Comply with Davis-Bacon Act Requirements

Sub-recipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction.

Step 3: Advertise for Bids

The invitation for bids must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

Sub-recipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible.

The Oklahoma Department of Commerce certifies Minority and Women owned businesses within the State. It should be noted which vendors are minority and women owned businesses on a subrecipients vendor lists, which will be cross-referenced with ODOC's business certifications. Note that it is a Federal law to take all necessary steps to assure that such businesses receive equal bidding opportunities and are utilized whenever possible.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

All Cities, Towns and Counties must follow that:

A. A bidder on a public construction contract exceeding Fifty Thousand Dollars (\$50,000.00) shall accompany the bid with:

1. A certified check, cashier's check or bid bond equal to five percent (5%) of the bid, which shall be deposited with the awarding public agency as a guaranty; or

2. An irrevocable letter of credit containing terms the Construction and Properties Division of the Department of Central Services prescribes, issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in an amount equal to five percent (5%) of the bid. The awarding public agency shall deposit the irrevocable letter of credit with the Division.

B. The cost of republication of the notice to bidders, actual expenses incurred by reason of the bidder's default and the difference between the low bid of the defaulting bidder and the amount of the bid of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of the certified check, cashier's check, bid bond or irrevocable letter of credit may, at the discretion of the awarding public agency, be forfeited to the awarding public agency in the event the apparently successful bidder fails to execute the contract or fails to provide the required bonds or irrevocable letters of credit and insurance to the awarding public agency.

C. The public agency shall, upon receipt of notice from the awarding public agency, return a certified or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on execution and delivery of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the bid solicitation.

D. Nothing contained herein shall be construed so as to prevent the awarding public agency or the courts from exonerating the bidder and other parties to the bid security document from liability upon a timely showing that the bidder committed what the courts have determined under the

common law to be an excusable bidding error and for that reason it would not be equitable to enforce the bid security (61 O.S. § 107).

For all Cities, Towns and Counties, each bidder shall accompany the bid with a written statement under oath disclosing the following information:

1. The nature of any partnership, joint venture or other business relationships then in effect or which existed within one (1) year prior to the date of such statement with the architect, engineer or other party to the project;
2. **Any such business relationship then in effect or which existed within one (1) year prior to the date of such statement** between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project; and
3. The names of all persons having any such business relationships and the positions they hold with their respective companies or firms. If none of the business relationships hereinabove mentioned exist, then a statement to that effect (61 O.S. § 108).

Step 4: Public Opening of Sealed Bid Packages

All bids will be publicly opened at the time and place prescribed in the invitation for bids. All sealed bid packages must be opened in accordance with the following standards in addition to any requirements imposed by local, state, and federal law.

- All bids shall be opened and read aloud during the bid opening and the apparent low bidder should be determined during this time;
- Bids shall undergo a review for both technical and legal responsiveness;
- Bidders must be evaluated as having the capacity to furnish the products and/or services required; and
- Minutes of the bid opening along with a tabulation of bids shall be placed in the contract file (**This will be a requirement to submit to ODOC**)

Sub-recipients should take action within 45 days of the bid opening (or 30 days for Cities, Towns, and Counties), or as otherwise specified in the bid documents, to either award a contract to the lowest responsible bidder or reject any and all bids for just cause. Any or all bids may be rejected if there is a sound documented reason (**This will be a requirement to submit to ODOC**).

If only one bid is received, the bid should be compared to in-house estimate of the cost and prices paid for the same or substantially similar item(s) in the past. Information from the marketplace

should be gathered if it was not done so when developing the estimate. If the sealed bid is cancelled and negotiations proceed with the single bidder, a complete cost breakdown must be obtained, and cost analysis performed. If the bidder refuses to comply, bids must be resolicited. All rationale for decisions must be documented.

Any final contracts awarded must be done so in compliance with the most recent federal wage decision. Sub-recipients must maintain documentation of the date, time, and location of the public bid opening.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

For all Cities, Towns, and Counties, all bids shall be sealed and opened only at the time and place mentioned in the bidding documents and read aloud in the presence of an administrative officer of the awarding public agency. Such bid opening shall be open to the public and to all bidders. (61 O.S. § 110).

For all Cities, Towns, and Counties, the awarding of a contract to the lowest responsible bidder or bidders shall be made within thirty (30) days after the opening of bids unless the governing body of the awarding public agency, by formal recorded action and for good cause shown, provides for a reasonable extension of that period, which extension period shall not in any event exceed fifteen (15) days where only state or local funds are involved, or not to exceed ninety (90) days on any award of contract for the construction of a public improvement where funds are utilized which are furnished by an agency of the United States Government. Upon mutual written agreement between the lowest responsible bidder or bidders and the awarding public agency, the Division may extend the contract award period no more than one hundred twenty (120) days from the bid opening date. (61 O.S. § 111).

Step 5: Award the Contract

A firm, fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

Sub-recipients must verify that the vendor is not debarred under the System for Award Management prior to awarding a contract. If only one bid is received, the Sub-recipient must receive approval from the ODOC CDBG-DR Programs Planner/Programs Representative/staff before awarding the applicable contract.

Procedures for Bids that Exceed Cost Estimates

In some instances, the lowest bid received will exceed the amount of funds estimated for a particular project. If this occurs, the Sub-recipient shall consult with ODOC CDBG-DR Programs Planner/Programs Representative/staff to determine the best course of action. Options include:

- Reject all bids received and re-advertise the project;
- Revise or reduce specifications and re-advertise the project, if approved by ODOC staff;
- Reallocate funds to cover the overage;
- Seek other funding sources such as local funds to cover the overage; and
- Enter into a legally binding contract with the lowest bidder for the amount of the bid presented and, subsequently, execute a change order* to bring the project cost within the limits presented by the allocated funds

*The change order would change the project's scope of work and must be reviewed and approved by ODOC CDBG-DR Programs Planner/Programs Representative/staff prior to execution. It is strongly advised that the Sub-recipient thoroughly analyzes how exercising this option would affect the other bidders prior to awarding the contract.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

For all Cities, Towns, and Counties, by majority action of the governing board of the awarding public agency or the chief administrating officer of an awarding public agency without a governing board, **the awarding public agency shall have the right to reject any or all bids and solicit bidders again as herein provided if, in the opinion of the governing body of the public agency, the best interests of the people of the State of Oklahoma would be best served by so doing.** (61 O.S. § 119).

Step 6: Execute the Contract

Sub-recipients must submit all documentation of advertisement of bids, minutes of bid opening, and reasoning for acceptance or denial of bids to ODOC CDBG-DR Programs Planner/Programs Representative/staff within 30 days of executing a prime contract.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained in the main office of the awarding public agency for a period of five (5) years from the date of opening of bids or for a period of three (3) years from the date of completion of the contract, whichever is longer, shall be open to public inspection and shall be matters of public record (61 O.S. § 112)

Competitive Proposal Procedures (All subrecipients shall follow):

Procurement by 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.

Request for Proposals (RFPs)

RFPs are used to procure professional services such as grant administrative services. This does not include architectural and engineering (“A/E”) professional services where the competitive negotiation method is utilized.

Request for Qualifications (RFQs)

RFQs are used to procure professional services such as engineering or architectural firms. RFQs use a competitive negotiation method. The selection is made based upon the competitor’s qualifications, subject to negotiation of fair and reasonable compensation.

This 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. RFQs cannot be used to procure project management or construction management services.

All A/E contracting fees, even those provided for under either a fixed price contract or a cost reimbursement contract must be deemed reasonable and justifiable. If, after a project has been

funded, there is a substantial change in the scope of the project, then ODOC CDBG-DR Programs Planner/Programs Representative/staff must review and approve these changes and determine whether or not any additional funds are allowable.

The provision of funds for A/E services is entirely contingent upon the amount of funds deemed allowable by ODOC CDBG-DR Programs Planner/Programs Representative/staff. Firms will not be compensated from the applicable CDBG DR program in the event of a project not receiving funding.

Conducting an RFP/RFQ

Step 1: Develop the Request for Proposals (RFP)/Request for Qualifications (RFQ) package

The RFP/RFQ should include a clear and accurate description of the technical requirements for the material, product, or service to be procured. At a minimum, the RFP/RFQ package should include the following:

Description of Sub-recipient's requirements and the scope of services. Sub-recipients may utilize the Sample Bid Document provided by ODOC CDBG-DR in their contracts for grant administrators, engineers and environmental service providers.

- Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance;
- Detailed instructions on proposal requirements;
- Deadline for submission; and
- Anticipated terms and conditions that will apply to a contract awarded under the solicitation.
 - A solicitation may authorize offerors to propose alternative terms and conditions.
 - When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement.

Step 2: Advertise the RFP/RFQ

Requests for proposals/requests for qualifications must be publicized and identify all evaluation factors and their relative importance. Sub-recipients should allow sufficient time between the solicitation date and proposal deadline. Any response to publicized requests for proposals must be considered to the maximum extent practical.

Proposals must be solicited from an adequate number of qualified sources. Sub-recipients must take all necessary steps to affirmatively assure, small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible.

The Oklahoma Department of Commerce certifies Minority and Women owned businesses within the State. It should be noted which vendors are minority and women owned businesses on a subrecipients vendor lists, which will be cross-referenced with ODOC's business certifications. Note that it is a Federal law to take all necessary steps to assure that such businesses receive equal bidding opportunities and are utilized whenever possible.

More information on ODOC's certification of Women and Minority owned businesses can be found here:

<https://www.okcommerce.gov/doing-business/business-services/women-owned-business-certifications/>

<https://www.okcommerce.gov/wp-content/uploads/Minority-Business-Certification-Programs.pdf>

Step 3: Evaluate and rate the proposals

Sub-recipients must have a written method for conducting technical evaluations of the proposals received and for selecting respondents. Materials received in response to RFPs and/or RFQs are typically reviewed in accordance with one of the following processes:

- **Competitive Point Range.** In using this review process, the Sub-recipient shall establish a predetermined range of points for proposals that would be considered adequate for qualifying a responder for a particular solicitation. All responders whose proposals or qualification statements score within that range would be invited to an oral interview and asked to submit a best and final offer. The proposals would then be re-evaluated, and the highest scoring firm would be selected;

- **Highest Point Earner.** In using this review process, the Sub-recipient shall evaluate all proposals or qualification statements in accordance with predetermined selection criteria and award the contract to overall highest scoring firm.

For counties, municipalities, and other public entities the local governing body has the final authority to award contracts and may select another respondent if the minutes of the local governing body meeting include justification for the selection. Sub-recipients must maintain documentation of the date, time, and location of the public bid opening.

Step 4: Award the contract

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Sub-recipients must also verify that the vendor is not debarred under the System for Award Management prior to awarding the contract. If only one bid or proposal is received, the Sub-recipient must receive approval from the ODOC CDBG DR Programs Planner/Programs Representative/staff before awarding the applicable contract.

Step 5: Execute the Contract

ODOC CDBG-DR recommends Sub-recipients submit the Financial Interest Report within 30 days of executing the contract.

Noncompetitive Proposal Procedures (Sole Source) (All Subrecipients Shall follow):

Sub-recipients **MUST** obtain written approval from ODOC CDBG-DR Programs Planner/Programs Representative/staff prior to using this procurement method. All requests to utilize non-competitive procurement must be submitted in writing by the Sub-recipient to ODOC CDBG-DR Programs Planner/Programs Representative/staff and include a justification as to why the contractor is the only known source to provide the goods or services under the contract. The justification and ODOC approval must be maintained for record-keeping requirements.

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

- 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 federal awarding agency or pass through entity expressly authorizes noncompetitive proposals in response to a written request from the Sub-recipient; or
- After solicitation of a number of sources, competition is determined inadequate.

Sub-recipients should conduct a cost analysis to determine if proposed costs are allowable, reasonable and allocable. Sub-recipients must also verify that the vendor is not debarred under the System for Award Management.

§200.321 contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- (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 (1) through (5) of this section.

State Requirements for Cities and counties for these issues:

There is no state requirement for Cities, Towns, and Counties to contract with minority of women owned businesses. Therefore, 2 CFR 200.321 will be followed.

Tribal Requirements for these issues:

Tribal Nations are required to follow 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Subrecipients Must Follow:

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

- a. The subrecipient 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:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. 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;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - v. 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

- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this section

Subrecipient Documentation:

Subrecipients are required to submit their vendor lists when procuring goods and services with CDBG-DR funds. Subrecipients will be required to submit current vendor lists with their policies and procedures at the time of application and the vendor lists used when procuring goods and services. The affirmative steps should be documented and submitted to ODOC CDBG-DR staff within 30 days of the signing of a contract.

The Oklahoma Department of Commerce certifies Minority and Women owned businesses within the State. It should be noted which vendors are minority and women owned businesses on a subrecipients vendor lists, which will be cross-referenced with ODOC's business certifications. Note that it is a Federal law to take all necessary steps to assure that such businesses receive equal bidding opportunities and are utilized whenever possible.

More information on ODOC's certification of Women and Minority owned businesses can be found here:

<https://www.okcommerce.gov/doing-business/business-services/women-owned-business-certifications/>

<https://www.okcommerce.gov/wp-content/uploads/Minority-Business-Certification-Programs.pdf>

§ 200.322 Domestic preferences for procurements.

(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.

All other subrecipients should follow 2 CFR 200.322 by providing preference to goods and services within the United States. Subrecipients can solicit for products, materials, and goods that are produced in the United States in order to fulfill the above Federal requirement.

Note that Subrecipients of CDBG-DR funds **are NOT allowed to follow 74 O.S. § 85.17A or 74 OS § 85.44E** Bidding Preferences when receiving CDBG-DR funds. All subrecipients must allow for full and open competition and cannot preference in-state bidders, nor disabled veteran businesses. All CDBG-DR subrecipients will be required to follow 2 CFR 200.322 and disregard the State bidding preferences **based on the following State statute allowing Federal regulations to supersede State regulations:**

74 O.S. § 85.14. Federal Law to Govern

Notwithstanding any provision of this act to the contrary, in all cases where federal granted funds are involved, the federal laws, rules and regulations thereto shall govern to the extent necessary to insure the benefit of such funds to the State of Oklahoma.

§200.323 Procurement of recovered materials.

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 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

All Subrecipients Must Follow:

All subrecipients must note which vendors on their vendor lists utilize recovered materials and make an effort, when practicable, to purchase such items when the purchase price exceeds \$10,000.

All subrecipients will be required to note which vendors offer such items and allow such vendors equal opportunity in submitting bids.

The following items should be solicited with the intent to identify goods that have the highest percentage of recovered materials, when practicable and maintain a satisfactory level of competition. **Subrecipients will be required to note the percentage of recovered materials used by bidders:**

§ 247.10 Paper and paper products.

Paper and paper products, excluding building and construction paper grades.

§ 247.11 Vehicular products.

- (a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils.
- (b) Tires, excluding airplane tires.
- (c) Reclaimed engine coolants, excluding coolants used in non-vehicular applications.

§ 247.12 Construction products.

(a) Building insulation products, including the following items:

- (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
 - (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
 - (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
 - (4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.
- (b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).
 - (c) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.
 - (d) Carpet made of polyester fiber for use in low- and medium-wear applications.
 - (e) Floor tiles and patio blocks containing recovered rubber or plastic.
 - (f) Shower and restroom dividers/partitions containing recovered plastic or steel.

- (g)(1) Consolidated latex paint used for covering graffiti; and
- (2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.
- (h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
- (i) Flowable fill containing coal fly ash and/or ferrous foundry sands.
- (j) Railroad grade crossing surfaces containing coal fly ash, recovered rubber, or recovered steel.

§ 247.13 Transportation products.

- (a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.
- (b) Parking stops made from concrete or containing recovered plastic or rubber.
- (c) Channelizers containing recovered plastic or rubber.
- (d) Delineators containing recovered plastic, rubber, or steel.
- (e) Flexible delineators containing recovered plastic.

§ 247.14 Park and recreation products.

- (a) Playground surfaces and running tracks containing recovered rubber or plastic.
- (b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.
- (c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.
- (d) Playground equipment containing recovered plastic, steel, or aluminum.

§ 247.15 Landscaping products.

- (a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.
- (b) Compost made from yard trimmings, leaves, grass clippings, and/or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.
- (c) Garden and soaker hoses containing recovered plastic or rubber.
- (d) Lawn and garden edging containing recovered plastic or rubber.
- (e) Plastic lumber landscaping timbers and posts containing recovered materials.

§ 247.16 Non-paper office products.

- (a) Office recycling containers and office waste receptacles.
- (b) Plastic desktop accessories.

- (c) Toner cartridges.
- (d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.
- (e) Plastic trash bags.
- (f) Printer ribbons.
- (g) Plastic envelopes.
- (h) Plastic clipboards containing recovered plastic.
- (i) Plastic file folders containing recovered plastic.
- (j) Plastic clip portfolios containing recovered plastic.
- (k) Plastic presentation folders containing recovered plastic.

§ 247.17 Miscellaneous products.

- (a) Pallets containing recovered wood, plastic, or paperboard.
- (b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.
- (c) Industrial drums containing recovered steel, plastic, or paper.
- (d) Awards and plaques containing recovered glass, wood, paper, or plastic.
- (e) Mats containing recovered rubber and/or plastic.
- (f)(1) Non-road signs containing recovered plastic or aluminum and road signs containing recovered aluminum.
- (2) Sign supports and posts containing recovered plastic or steel.
- (g) Manual-grade strapping containing recovered steel or plastic.

§200.323 Contract cost and price.

- (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—Cost Principles of this part. 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 200.323(d) prohibits cost plus percentages

The State does not have specific requirements for cost/price analysis. Therefore 2 CFR 200.323 will be followed for all subrecipients.

Subrecipients Must Follow:

Cost and Price Analysis

For procurement actions in excess of the Federal Simplified Acquisition Threshold, Sub-recipients must perform a cost or price analysis. This requirement also applies to contract modifications and change orders. Note that Sub-recipients must consider price reasonableness for micro-purchases as well as small purchases.

Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services and should be documented in the procurement file. In conducting a proper price analysis Subrecipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison. When comparing prices, Subrecipients should review for significant discrepancies to determine if the goods or services are comparable.

Cost Analysis

Sub-recipients will utilize this process to help determine if proposed costs are allowable, reasonable and allocable as described in 2 CFR 200.403-405. Prior to receiving bids or proposals, Sub-recipients should establish an independent estimate for the goods or services to be procured. When conducting a cost analysis, Sub-recipients must review and evaluate the separate elements of cost and negotiate profit in a received proposal.

A cost analysis is required when price competition does not exist. The following are examples of when cost analysis is used:

- The competitive proposal method is used;
- The sole source procurement method is used;
- Only one bid is received during a sealed bid procurement; and
- A contract modification is requested that changes the price or total estimated cost (either upwards or downwards)

Conducting a price and cost analysis:

- Check the accuracy of the prices submitted;
- Evaluate the necessity of the proposed cost items;
- Evaluate the separate elements of cost;
- Review proposal for potential cost overruns, taking into consideration the vendor's

past performance;

- Compare proposed prices to Sub-recipient's independent cost estimate; and
- Compare proposed prices to previous cost estimates or actual costs incurred for similar work

Subrecipient Documentation:

Subrecipients should have their own forms to conduct cost and price analysis. Any documentation proving that subrecipients did a cost and price analysis should be submitted to ODOC/CD to ensure that subrecipients are following all necessary Federal guidelines.

§200.324 Federal awarding agency or pass-through entity review.

- (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) 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.

Relation to Subrecipient:

ODOC/CD will ensure compliance with all Federal guidelines for procurement by requiring all subrecipients to submit procurement policies and procedures at the time of application. Subrecipients will also be required to submit all documents on the procurement of goods and services throughout their contract period. ODOC/CD requires all subrecipients to provide procurement documentation upon request. Likewise, ODOC/CD will make all documentation as it pertains to procurement available to HUD upon request.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (or \$50,000 for Cities, Towns and Counties), 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 obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

State Requirements for Cities and Counties for these issues:

61 O.S. § 113

A. Except as otherwise provided by law, within the period of time, not to exceed sixty (60) days, specified in the bid notice by the awarding public agency, a contract embodying the terms set forth in the bidding documents shall be executed by the awarding public agency and the successful bidder. No bidder shall obtain any property right in a contract awarded under the provisions of the Public Competitive Bidding Act of 1974 until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts exceeding Fifty Thousand Dollars (\$50,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of this title;
2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;
3. A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project; and
4. Public liability and workers' compensation insurance during construction in reasonable amounts. A public agency may require the contractor to name the public agency and its architects or engineers, or both, as an additional assured under the public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

C. A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of subsection B of this section, provided such single irrevocable letter of credit meets all applicable requirements of subsection B of this section. If the contractor needs additional time in which to obtain the bond required pursuant to subsection B of this section, the contractor may request and the awarding agency may allow the contractor an additional sixty (60) days in which to obtain the bond.

Tribal Requirements for these issues:

Tribal Nations are required to follow CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Other subrecipients Will Follow:

Other subrecipients are encouraged to accept the bonding policy in 2 CFR § 200.326 for construction and facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. For contracts over the simplified acquisition threshold, subrecipients should require a bid guarantee from each bidder equivalent to five percent of the bid price consisting 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 this bid, execute such contractual documents as may be required within the time specified;

- Sub-recipients should require a performance bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;
- Sub-recipients should require a payment bond on the part of the contractor for one hundred percent of the contract price as 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 exceeding fifty thousand dollars (\$50,000) as defined in Title 61 of the Oklahoma Statutes.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, next section.

APPENDIX II to Part 200—CONTRACT PROVISIONS 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 currently set at \$250,000, 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, 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, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). 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), as supplemented by Department of Labor regulations (29 CFR 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 sub recipient 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 (40 U.S.C. 3701-3708). 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 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 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 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 (a) and the recipient or sub recipient 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 sub recipient must comply with the requirements of 37 CFR 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 (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants 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 (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR 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.
- (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 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. 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.

Subrecipients Must Follow:

All subrecipients will be required to sign contracts with the Appendix 2 CFR 200 requirements. Further, if subrecipients have contracts with their own subrecipients, they must have the same requirements in all such contracts. **Contract templates will be required to submit to ODOC at the time of application.** Such contracts will also be required to submit to ODOC within 30 days of the signing of such contracts.

Additional Contract Requirements:

In addition to the above contract requirements, ODOC/CD must also include contract conditions found at 570.503 and 24 CFR 570.600 – 615 (subpart K). Where applicable, subrecipient in turn must put those provisions in contracts they award.

2 CFR 570.503:

ODOC is required to follow the below policies before disbursing funds to subrecipients. These requirements are further outlined in ODOC's CDBG-DR contracts with subrecipients Part I & II. All requirements that are not outlined in Parts I & II will be detailed in Contract Part III Specific Conditions. This contract part details terms and requirements that are specific to the subrecipient such as their schedule for completing work and reversion of assets:

(a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) **Statement of work.** The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

(2) **Records and reports.** The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

(3) **Program income.** The agreement shall include the program income requirements set forth in § 570.504(c). The agreement shall also specify that, at the end of the program year, the grantee may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

(4) **Uniform requirements.** The agreement shall require the subrecipient to comply with applicable uniform requirements, as described in § 570.502.

(5) **Other program requirements.** The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart K of these regulations, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at § 570.604; and

(ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR part 52.

(6) **Suspension and termination.** The agreement shall set forth remedies for noncompliance and provisions on termination in accordance with 2 CFR part 200, subpart D.

(7) **Reversion of assets.** The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of \$25,000 is either:

(i) Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or

(ii) Not used in accordance with paragraph (b)(7)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

1.2.5.1.1 Attachments:

SECTION III-1 Sub Recipient Contract Template Part I & II

Other Program Requirements - 24 CFR 570.600-615 (Subpart K):

ODOC, and its subrecipients, must also ensure full compliance with the following:

§ 570.600 General.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to states made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular Areas Program in § 570.405 and § 570.440 with the exception of § 570.612. The absence

of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to states under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.487.

(b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (subparts D and F, respectively), the requirements of this subpart K are applicable to grants made pursuant to sections 107 and 119 of the Act (subparts E and G, respectively), and to loans guaranteed pursuant to subpart M.

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

(a) The following requirements apply according to sections 104(b) and 107 of the Act:

(1) Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and implementing regulations in 24 CFR part 1.

(2) Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Each community receiving a grant under subpart D of this part, shall submit a certification that it will affirmatively further fair housing, consistent with §§ 5.150 and 5.151 of this title.

(b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

§ 570.603 Labor standards.

(a) Section 110(a) of the Act contains labor standards that apply to non-volunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(b) The regulations in 24 CFR part 70 apply to the use of volunteers.

§ 570.604 Environmental standards.

For purposes of section 104(g) of the Act, the regulations in 24 CFR part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. In certain cases, grantees assume these environmental review, decision-making, and action responsibilities by execution of grant agreements with the Secretary.

§ 570.605 National Flood Insurance Program.

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under subpart D of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

(a) General policy for minimizing displacement. Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) Relocation assistance for displaced persons at URA levels.

(1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(2) Displaced person.

(i) For purposes of paragraph (b) of this section, the term “displaced person” means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this part. A

permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the grantee (or the state recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the “initiation of negotiations” if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(2) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term “displaced person-” does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) Initiation of negotiations. For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term “initiation of negotiations” means the execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) Residential antidisplacement and relocation assistance plan. The grantee shall comply with the requirements of 24 CFR part 42, subpart B.

(d) Optional relocation assistance. Under section 105(a)(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR 570.201(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) Acquisition of real property. The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) Appeals. If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) Responsibility of grantee or State.

(1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require state recipients to certify that they will comply with the requirements of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee (or State and state recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

§ 570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, grantees shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 75.

§ 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

§ 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

The requirements set forth in 24 CFR part 5 apply to this program.

§ 570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, as set forth at § 570.502.

§ 570.611 Conflict of interest.

(a) Applicability.

(1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.317 and 200.318 shall apply.

(2) In all cases not governed by 2 CFR 200.317 and 200.318, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to § 570.203, 570.204, 570.455, or 570.703(i)).

(b) Conflicts prohibited. The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(d) Exceptions. Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) Threshold requirements. HUD will consider an exception only after the recipient has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

- (vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (vii) Any other relevant considerations.

§ 570.612 Executive Order 12372.

(a) General. Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) Applicability. Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

§ 570.613 Eligibility restrictions for certain resident aliens.

(a) Restriction. Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in paragraph (e) of this section. "Benefits" under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available under covered activities funded by programs listed in paragraph (e) of this section. "Benefits" do not include relocation services and payments to which displacees are entitled by law.

(b) Covered activities. "Covered activities" under this section means activities meeting the requirements of § 570.208(a) that either:

(1) Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or

(2) Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

(c) Limitation on coverage. The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.

(d) Compliance. Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.

(e) Programs affected.

(1) The Community Development Block Grant program for small cities, administered under subpart F of part 570 of this title until closeout of the recipient's grant.

(2) The Community Development Block Grant program for entitlement grants, administered under subpart D of part 570 of this title.

(3) The Community Development Block Grant program for States, administered under subpart I of part 570 of this title until closeout of the unit of general local government's grant by the State.

(4) The Urban Development Action Grants program administered under subpart G of part 570 of this title until closeout of the recipient's grant.

§ 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of “residential structure” as defined in 24 CFR 40.2 or the definition of “building” as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

(b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable - that is, easily accomplishable and able to be carried out without much difficulty or expense.

§ 570.615 Housing counseling.

Housing counseling, as defined in 24 CFR 5.100, that is funded with or provided in connection with CDBG funds must be carried out in accordance with 24 CFR 5.111.

ODOC/CD’s policies and procedures to adhere to the above requirements are furthered outlined throughout the manual in other sections