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Procurement Guide for Subrecipients and Subgrantees

Table of Contents

5 Procurement Guide for Subrecipients and Subgrantees

5.1 Background

Subrecipients procuring goods and services with grant funds must follow all program, statutory, and regulatory requirements. This chapter establishes standards and guidelines for procurement, which are governed by 2 CFR Part 200 (d), 24 CFR Part 570.489, Federal Register Notices, and state and local laws.

The following standards will help subrecipients and subgrantees receiving Community Development Block Grant Disaster Recovery (CDBG-DR) funds to procure goods and services efficiently while complying with the applicable federal requirements.

The guidance in this chapter does not relieve subrecipients or subgrantees of any contractual responsibilities under its contracts or local, state, or federal law. Subrecipients are responsible, with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement in support of the grant.

5.2 Application of Federal Regulations

Oregon Housing and Community Services (OHCS) implementing 24 CFR Part 570.489 (g) requires subrecipients and subgrantees to procure goods and services following 2 CFR Part 200.318–327. Any activity financed in whole or in part with federal funding must comply with the federal procurement standards and any other applicable federal, state, or local requirements for the CDBG-DR program.

5.3 Procurement Policies Requirements

Subrecipients should determine whether their written procurement policies and procedures comply with all federal requirements in 2 CFR Parts 200.318–327. Subrecipient procurement policies must include the federal requirements and the requirements found in Oregon procurement laws[1] if intending to use CDBG-DR funds to pay for such services.

[1] If Oregon procurement regulations and requirements are stricter than federal standards or have additional conditions not required by federal procurement standards at 2 CFR Part 200.318–327, then the strictest regulation should be applied.

Administration and Oversight: Subrecipients must administer and oversee contractors to ensure that they perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Avoidance of Unnecessary or Duplicative Items: Subrecipients must avoid acquiring unnecessary or duplicative items by considering ways to consolidate purchases or leases to obtain more economical purchases.

Awarding to Responsible Contractors: Subrecipients must award contracts only to responsible contractors who have the ability to perform successfully under the terms and conditions of a proposed procurement. Subrecipients should consider vendor integrity, compliance with public policy, record of past performance, and financial and technical resources to deem a contractor responsible. See Appendix A for sample award form.

Conflict of Interest: No employee, officer, or agent of the subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if that individual has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent has any immediate family member, partner, or an organization that employs or is about to employ any of the parties indicated to have a financial or other interest in a tangible personal benefit from a firm considered for a contract.

Dispute Resolution: Subrecipients alone are responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of their procurement.

Gifts and Gratuities: The officers, employees, or agents of the subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, subrecipients may set standards for situations where the financial interest is not substantial or the unsolicited gift is of nominal value. The standards of conduct must apply disciplinary action for violations of such standards by officers, employees, or agents of the subrecipient.

Government Agreements: To foster greater economy and efficiency, subrecipients are encouraged to enter into state and local intergovernmental agreements to procure or use common goals and services. This can include promoting the use of federal excess and surplus property and equipment to reduce project costs.

Recordkeeping: Subrecipients must retain records detailing the history of procurement. These records include:

- Rationale for the method of procurement
- Selection of contract type

- Independent cost estimate
- Advertisements and solicitations
- Responses to procurement
- Bid evaluations
- Contractor selection or rejection
- Basis for the contract price
- Suspension and debarment verification

Standards of Conduct: Subrecipients must maintain written procedures covering conflicts of interest and governing the actions of employees, agents, consultants, and elected officials engaged in the selection, award, and administration of contracts; the award of CDBG-DR assistance; or the management of federally assisted or purchased property.

Value Engineering Clauses: Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

5.4 Procurement Procedures and Standards

Subrecipients must have written procedures for procurement transactions that ensure that all solicitations align with federal requirements. Subrecipients must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must not, in competitive procurements, contain features that restrict competition. The description may include a statement of the qualities of the material, product, or service to be procured and, when necessary, set forth minimum essential characteristics and standards to which it must conform to be satisfactory. Detailed product specifications should be avoided if possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used to define the performance or other important requirements of procurement. The specific features of the named brand that must be met by offerors must be clearly stated.

Clearly set forth all requirements that the offerors must fulfill:

- The procurement must identify the source(s) of funds being used for the project (e.g., CDBG-DR).
- The subrecipient must identify all factors that offerors must fulfill to be used in evaluating bids or proposals.

- Awards shall be given only to responsible contractors who have the ability to perform successfully under the terms and conditions of a proposed procurement.

To make sure there is objective contractor performance and eliminate unfair competitive advantage, contractors who develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

Examples of prohibited restriction of competition include:

- Placing unreasonable requirements on firms for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Using noncompetitive pricing practices between firms or between affiliated companies
- Offering noncompetitive contracts to consultants that are on retainer contracts
- Allowing 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
- Conducting any arbitrary action in the procurement process

When using pre-qualified lists, subrecipients must ensure that all lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, subrecipients must not prevent potential bidders from qualifying during the solicitation period.

Proposed procurement actions must be reviewed by subrecipient officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis must be made of lease and purchase alternatives to determine which would be the most economical and practical procurement. Consideration should be given to consolidating or breaking out to obtain a more economical CDBG-DR project.

5.5 Public Website

OHCS must maintain a public website that permits individuals and entities to see how the funds are being used and administered. This provides transparency to the public and allows for maximum accountability for the work performed, contractor selected, and status of the work.

Procurement information that must be available on the website includes:

- All contracts paid with CDBG-DR, including subrecipient's contracts[2]
- A summary containing details such as:
  - Status or phase of ongoing procurement processes
  - Description of the goods or services being procured
  - Entity procuring the related goods or services

5.6 Phases of Procurement

The phases of procurement include pre-award through post-award, reporting, and administration. Before buying goods and services with CDBG-DR to assist in recovery efforts, subrecipients should keep the following procurement-related actions in mind:

1. Pre-procurement
2. Procurement
3. Pre-contract award
4. Contract award
5. Post-contract award

5.6.1 Pre-Procurement Actions

5.6.1.1 Executed OHCS Subrecipient Agreement

Subrecipients must have a fully executed agreement with required federal and state provisions before starting procurement action or executing any project.

5.6.1.2 Contractor/Subrecipient Determination Form

Subrecipients must document before procurement that a determination has been made that the relationship into which they will enter is contractual. See Appendix B of this document for a sample form titled Contractor/Subrecipient Determination Form.

[2] Contracts that do not exceed the micro-purchase threshold are not required to be posted.

5.6.1.3 Environmental Review Clearance

All CDBG-DR grants require an environmental review before starting projects receiving funds. This is to meet the National Environmental Policy Act standards. Any funds committed, awards made, contracts executed, or projects started prior to the environmental review approval and receipt of Authorization to Use Grant Funds (AUGF) are a "choice-limiting action."[3]

5.6.1.4 Authority To Use Grant Funds

The subrecipient must have received authority to use grants funds from OHCS. Once the Part 58 environmental requirements have been met, the responsible entity will issue an "Authorization to Use Grant Funds" (AUGF). This means that a subrecipient can begin a procurement action.

In no event should a "**choice-limiting action**" be entered into before receiving the AUGF. Entering a contract, announcing the selection of a contractor, or entering into an unconditional purchase agreement would be examples of "choice-limiting actions." Taking this form of action has the potential for tainting a procurement, requiring the procurement be redone, or disqualifying the entire project for CDBG-DR funding. For more information on the process for completion of the environmental review, subrecipients should refer to the Environmental Review Chapter of the subrecipient manual.

5.6.1.5 Conflicts of Interest

Subrecipients 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.

No employee, officer, or agent of subrecipients may participate in the selection, award, or administration of a vendor contract supported by a federal award with a real or apparent conflict of interest. Conflicts of interest arise when the employee, officer, agent,

[3] HUD defines a choice-limiting action as one that may have an adverse impact on the environment or limit the choice of reasonable alternatives. A choice-limiting action may include signing a lease agreement, real property acquisition, rehabilitation, repair, demolition, disposition, or new construction. Real property acquisition, new construction, disposition, and demolition are not eligible for Emergency Solutions Grant (ESG) program costs; however, for the purposes of environmental review, projects are based on the aggregation of all activities that are included in the scope of the environmental review. So even if ESG program funds are used to pay only for a portion of the overall project, recipients and subrecipients should still be aware of the non-ESG eligible activities involved that are considered choice-limiting actions. Activities listed at 24 CFR Part 58.35(b) that are Categorically Excluded Not Subject To 58.5 (e.g., Tenant-Based Rental Assistance, provision of services) are not choice-limiting actions.

any member of one's immediate family, one's partner, or an organization that 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.

In addition, 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 (see 2 CFR Part 200.319). One example is an administrative consulting firm that participates in developing or distributing the request for proposal (RFP) for environmental services may not then submit a proposal in response to that RFP. Additional examples of conflicts of interest include:

- The same individual or firm is interested in identifying both a benefiting business in the subrecipient agreement performance statement and any consultant or construction contracts required to complete the project.
- Elected officials vote on awarding funds to organizations where a family member is on the staff or where the elected official is on the subrecipient's board.
- Local officials award vendor contracts to companies where they, their family members, or close associates hold positions or have ownership interests.
- Subrecipient officials or staff have relatives who may benefit from a subrecipient's programmatic activities.

5.6.1.6 Pre-Qualified Contractors or Vendors

The non-federal entity must ensure that all pre-qualified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.

- The non-federal entity must not preclude potential bidders from qualifying during the solicitation period.
- Subrecipients should consider how recently the solicitation occurred for a pre-qualified list and determine whether the list is outdated.
- If the subrecipient does not have a routine schedule to solicit qualified vendors, a new period to pre-qualify vendors may be necessary to meet the federal procurement guidelines of free and open competition.

5.6.1.7 Affirmative Steps

The subrecipient must take all necessary affirmative steps to assure that minority business enterprises (MBE), women's business enterprises (WBE), and labor surplus area firms are used when possible.[4] The affirmative steps must include:

- Placing qualified small businesses and MBEs and WBEs on solicitation lists
- Ensuring that small businesses and MBEs and WBEs are solicited whenever they are potential sources
- Dividing total requirements into smaller tasks or quantities to permit maximum participation by small businesses and MBEs and WBEs, where economically feasible
- Establishing delivery schedules that encourage the participation by small and MBEs and WBEs, where the requirement permits
- Using the services and assistance of organizations like the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce as well as the U.S. Department of Housing and Urban Development's (HUD) Section 3 business registry
- Requiring the prime contractor to take the affirmative steps above if subcontracts are to be let

5.6.1.8 Independent Cost Estimate

Before procurement, HUD and 2 CFR Part 200.324 require that the procuring entity conduct an independent cost estimate. This is an estimate of the goods or services to be acquired under a contract or a modification. It allows a subrecipient to determine the reasonableness of the responses to the solicitation, for budgetary purposes, and to help determine the most advantageous procurement method.

It is prepared ***before*** solicitation or modification that exceeds the simplified acquisition threshold (SAT) and may not be necessary for actions considered to be micro-purchases. If a significant time elapses or market conditions change between the time the original independent cost estimate was prepared and offers received, the independent cost estimate may need to be updated.

Examples of data that can be used to determine a cost or price estimate include:

- Price last paid for similar procurement
- Catalog price or other advertised offers

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[4] The Department of Labor updates the labor surplus area firms list on its fiscal year basis every Oct. 1. The labor surplus area list is available on DOL's website located here: Labor Surplus Area | U.S. Department of Labor (dol.gov).

- Past professional experience
- Professional journals discussing relevant market trends
- Other historical information

These estimates may be developed in-house or using outside parties. Depending on the type of project to be undertaken, this independent cost estimate can be done by any individual or entity with reasonable experience or certifications relevant to the procurement. Appendix C of this document has a sample form that can be used for cost estimates for an RFP.

5.6.2 Procurement Actions

Appendix D contains a table that breaks down thresholds by type of procurement. Refer to 2 CFR Part 200.320 and the Federal Acquisition Regulation (FAR) for details on the specific application of the micro-purchase and SAT.

5.6.2.1 Informal Procurement Methods

When the value of the procurement for property or services under a federal award does not exceed the SAT as defined in 2 CFR Part 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:

5.6.2.1.1 Micro-Purchases

- **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. When determining if the micro-purchase method should be used, subrecipients should use the complexity of the goods or services and estimated total cost to determine the most appropriate procurement method.
  - Do not fragment purchases with the intent to reduce the procurement effort and use a micro-purchase method. This may be considered an arbitrary procurement action that limits free and open competition.
  - To the maximum extent practicable, the subrecipient's entity should distribute micro-purchases equitably among qualified suppliers.

- **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 accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved pursuant to their policy by the subrecipient.
- **Micro-Purchase Thresholds.** This applies to purchases below $10,000 that do not require construction. If construction includes the purchase, then it must be below $2,000 to follow micro-purchase rules.
- **Increasing Micro-Purchase Threshold up to $50,000.**[5] A subrecipient may establish a threshold higher than what is identified in 2 CFR Part 200.1 and clarified in the Federal Acquisition Regulation by self-certification. The self-certification up to $50,000 must be done annually, and documentation must be retained for the federal awarding agency and auditors in accordance with 2 CFR Part 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following. For public institutions, a higher threshold must be consistent with state law.
    - A qualification as a low-risk auditee, in accordance with the criteria in 2 CFR Part 200.520 for the most recent audit
    - An annual internal institutional risk assessment to identify, mitigate, and manage financial risks

  Increasing Micro-Purchase Threshold Over $50,000.[6] Must be approved by a subrecipient's cognizant agency for indirect costs. The non-federal entity must submit a request with the following requirements:
    - Self-certify the threshold on an annual basis.
    - Maintain documentation to be made available to the federal awarding agency and auditors in accordance with 2 CFR Part 200.334.
    - Provide justification with a clear identification of the threshold
    - Provide supporting documentation of any of the following:
        - A qualification as a low-risk auditee, in accordance with the criteria in 2 CFR Part 200.520 for the most recent audit

[5] Subrecipients following Oregon Revised Statutes (ORS) 279B.065 or ORS 279B.070 may be limited to increasing the micro-purchase threshold to $25,000, which is stricter than the federal requirement.

[6] Subrecipients following ORS 279B.065 or ORS 279B.070 may be limited to increasing the micro-purchase threshold to $25,000 which is stricter than the federal requirement.

  - An annual internal institutional risk assessment to identify, mitigate, and manage financial risks
- Maintain a higher threshold for public institutions that must be consistent with state law

5.6.2.1.2 Small Purchases

- **Small Purchase Procedures.** Small purchases are the acquisition of property or services, where the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. The subrecipient must gather price or rate quotations from an adequate number of qualified sources.
- **SAT.** The non-federal entity is responsible for determining an appropriate SAT based on internal controls, an evaluation of risk, and its documented procurement procedures, which must not exceed the threshold established in the Federal Acquisition Regulation. At the time this manual was drafted, the SAT was $250,000. Periodically, the thresholds are adjusted, so always check the most current Federal Register notices for any updates. Subrecipients whose procurement rules may have a lower dollar value threshold to procure using the small purchase method must use the lesser of the two values to adhere to the stricter standards. Each entity should determine whether an informal or formal procurement method should be used.

5.6.2.2 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. The following formal methods of procurement are used to procure property or services above the SAT or a value below the SAT that the non-federal entity determines to be appropriate.

5.6.2.2.1 Sealed Bids

- The sealed bid procurement method is a publicly solicited bid with a firm, fixed-price contract awarded to a responsible bidder. The bid must be the lowest in price and conform with all material terms and conditions listed in the invitation for bids. For sealed bidding to be feasible, the following conditions should be present:
  - 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.

  - The procurement lends itself to a firm, fixed-price contract, and the selection of the successful bidder can be made principally based on price.

- If sealed bids are used, the following requirements apply:
  - An independent cost estimate must be performed before receiving bids.
  - Bids must be solicited from an adequate number of qualified sources and provide sufficient response time prior to the date for opening bids. For local and tribal governments, the invitation for bids must be publicly advertised. The invitation for bids includes any pertinent specifications and attachments and must define the items or services in order for the bidder to properly respond.
  - 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 publicly advertised.
  - 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 the lowest bid. Payment discounts will be used only to determine the low bid when prior experience indicates that the bidder takes advantage of the discounts.
  - Any or all bids may be rejected if there is a sound documented reason.

5.6.2.2.2 Requests for Proposals

An RFP is a procurement method in which either a fixed-price or cost-reimbursement type contract is awarded. They are used when conditions are not appropriate for sealed bids. They are awarded in accordance with the following requirements:

- An RFP 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 RFPs must be considered to the maximum extent practical.
- An independent cost estimate must be conducted before receiving proposals. Any external party involved in developing the independent cost estimate or creating the RFP may not participate as a vendor in the awarded contract.
- The non-federal entity must have a written method for conducting technical evaluations of the proposals received and making selections. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-federal entity, with price and other factors considered.
- The non-federal entity may use competitive proposal procedures for qualifications-based procurement, called a request for qualifications (RFQ), for architectural/engineering (A/E) professional services. The entity evaluates the

offerors' qualifications and selects the most qualified offeror, subject to negotiating fair and reasonable compensation. The method, where price is not used as a selection factor, can be used only 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.

5.6.2.2.3 Noncompetitive Procurement

There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can be awarded only if one or more of the following circumstances apply:

- The aggregate dollar amount of which does not exceed the micro-purchase threshold for the acquisition of property or services.
- The item is available only from a single source.
- A public emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.[7]
- The federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-federal entity.
- After solicitation of several sources, competition is determined inadequate.

Independent cost estimates are required and must be well documented with the rationale for using the noncompetitive procurement.

5.6.3 Pre-Contract Award

5.6.3.1 Contract Cost and Price

As specified in 2 CFR Part 200.324, a cost analysis or price analysis must be performed for every procurement action that exceeds the simplified acquisition threshold, including contract modifications or change orders. The degree of detail required varies with the procurement method and contracting circumstances but must start with independent estimates before receiving bids or proposals.

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 2 Part CFR 200 (e). The

[7] CDBG-DR funds for recovery do not constitute an emergency purchase. A public emergency must be documented as a part of history of the procurement and the rationale.

non-federal entity may reference its own cost principles that comply with the federal cost principles.

5.6.3.2 Conducting a Price and Cost Analysis

Subrecipients should include the following in their analysis:

- A comparison of the proposed prices to the subrecipient's independent cost estimate
- A review of the accuracy of the prices submitted
- An evaluation of the necessity of the proposed cost items
- An evaluation of the separate elements of cost
- A review of the proposal for potential cost overruns, considering the vendor's past performance
- A comparison of the proposed prices to previous cost estimates or actual costs incurred for similar work

Subrecipients must not use either the cost plus a percentage of cost or percentage of construction cost method of contracting.

5.6.3.3 Negotiating Profit

The non-federal entity must negotiate profit as a separate element of price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to:

- The complexity of the work
- The risk borne by the contractor
- The contractor's investment
- The amount of subcontracting
- The quality of its record of past performance
- The industry profit rates in the surrounding geographical area for similar work

Subrecipients are responsible for maintaining records and any documentation used to support the profit negotiation.

5.6.3.4 Bonding Requirements and Insurance

For construction or facility improvement contracts or subcontracts exceeding the SAT, the awarding agency may accept the bonding policy and requirements of OHCS and Oregon. This is providing the awarding agency has determined that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- A bid guarantee from each bidder equivalent to 5% of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of their bid, execute contractual documents required within the time specified.
- A performance bond on the part of the contractor for 100% 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 the contract.
- A payment bond on the part of the contractor for 100% 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. Oregon bond requirements can be found at oregon.gov/ccb/pages/ccb%20license.aspx. Subrecipients should comply with bond requirements as directed by OHCS.

5.6.3.5 Suspension and Debarment

Subrecipients are subject to the debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.220. 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.

Before Award: Subrecipients must make sure that all contractors whose awarded contract is expected to be equal to or exceed $25,000 have met all the eligibility requirements outlined in state and federal law. All contractors must be cleared via a search of the Federal System of Award Management (SAM) to ensure that the contractor is in good standing and has not been debarred. The SAM portal can be found at sam.gov. A copy of the SAM search result, with the date to demonstrate the search occurred before award, must be kept in the subrecipient's file on that contractor.[8]

Subrecipients must also check the Oregon debarred contactors list at oregon.gov/boli/employers/pages/pwr-ineligible-contractors.aspx. Pursuant to ORS 279C.860, contractors on this list are ineligible to receive public works contracts subject to the Prevailing Wage Rate Law.

[8] The SAM search function has a demonstration video on how to use the website located here: youtu.be/Zlv7hFpBZcc?si=jT-MYuiJXPcK-JhF

Subrecipients 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.

If any of the above-listed parties are deemed ineligible to receive CDBG-DR funds after award of the contract, the matter must be reported to OHCS immediately for further guidance and may result in the contract being terminated.

5.6.4 Contract Award

5.6.4.1 Allowable Contract Types

Types of contracts that a subrecipient can utilize include:

- Purchase orders
- Fixed-priced contracts
- Cost-reimbursement contracts
- Time and materials contracts

5.6.4.1.1 Purchase Orders

Purchase orders are a form of contract utilized for the purchase of supplies, single-task services, and produced items procured through the small purchase method.

A purchase order should contain, at a minimum, the following:

- Agency name and address
- Agency contract or purchase order number
- Order date
- Term of contract (delivery period after receipt of order or beginning and end dates)
- Contractor’s name, payee/vendor identification number, address, and ZIP code
- National Institute of Governmental Purchasing class/item for each item
- Purchase code category
- List of contract documents and their order of precedence
- List of awarded items with quantity, unit of measure, and unit price with extended totals
- Signature of authorized/certified purchasing representative

5.6.4.1.2 Fixed-Price Contract

A fixed-price contract is suitable for the acquisition of commercial items, including construction, or for the acquisition of other supplies or services based on definite, functional, or detailed specifications, and when the contracting officer can establish fair and reasonable prices at the outset.

This contract type:

- Places maximum risk and full responsibility for costs and resulting profit loss on the contractor
- Provides maximum incentive for the contractor to control costs and perform effectively
- Imposes a minimum administrative burden upon the contracting parties

5.6.4.1.3 Cost-Reimbursement Contract

A cost-reimbursement contract is suitable for situations in which uncertainties are involved in contract performance that do not permit costs to be estimated with sufficient accuracy to establish a fixed contract price. These types of contracts establish an estimated total cost to obligate funds and establish a ceiling that contractors may not exceed (except at their own risk).

5.6.4.1.4 Time and Materials Contracts

Subrecipients may use a time and materials type contract only after determining that no other contract structure is suitable. It must include a ceiling price that the contractor exceeds at their own risk. In this type of contract, the subrecipient's cost is the sum of:

- The actual cost of materials
- Direct labor hours charged at fixed hourly rates that reflect wages
- General or administrative expenses and profit

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, which the contractor exceeds at their own risk.

Any subrecipient awarding this type of contract must assert a high degree of oversight to obtain reasonable assurance that the contractor uses efficient methods and cost controls.

5.6.4.1.5 Changes/Amendments to an Executed Contract

When changes to an executed contract are necessary and would result in a change to the subrecipient agreement, the subrecipient should request an adjustment to both the subrecipient agreement and the subrecipient contract. When changes to an executed construction contract are necessary:

- The subrecipient must submit how they followed their policy on documenting the requirements for a change order or amendment.
- The subrecipient must ensure that all items listed on the change order are eligible and comply with the subrecipient agreement as outlined and all environmental review requirements have been met.
- Change orders for construction contracts will require additional documented analysis to determine that added costs are necessary, reasonable, and eligible.
- Changes or additions to the scope of work for subrecipient agreements must be documented.

5.6.4.2 Required Contract Provisions

Appendix E of this document includes a comprehensive listing of the specific contract provisions that may be used as an example to be included in contractor agreements. All contracts using federal funds must contain the following provisions:

- Administrative, contractual, or legal remedies for breach of contract terms and sanctions (if contract is greater than the SAT)
- Termination for cause or convenience (if over $10,000)
- HUD clauses
    - Equal Employment Opportunity
    - Davis-Bacon Act
    - Section 3 (if construction over $200,000)
    - Contract Work Hours and Safety Standards
    - Rights to Inventions Made Under Contract or Agreement
    - Clean Air Act
    - Debarment and Suspension
    - Byrd Anti-Lobbying Amendment
    - Section 6002 of the Solid Waste Disposal Act

- Prohibited telecommunications and video surveillance services or equipment
- Domestic preferences for procurements under the Buy America Act

5.6.5 Post-Contract Award Actions

5.6.5.1 Procurement Documentation Requirements

Any project requiring procurement should maintain a complete procurement file for each procurement. This file must be retained consistent with the record retention requirements of the state's CDBG-DR grant and available for review and monitoring upon request.

Each procurement record should contain the following information:

- An independent cost estimate for the project or services being procured
- A complete copy of the procurement documents, which must include as relevant:
  - Technical proposal
  - Evaluation criteria
  - Submission timeline and details
  - Proof of advertisements (if applicable)
  - Proof that an adequate number of firms were directly contracted
  - Copy of bidding/proposal packages received
  - Copy of bid evaluations and tabulations
  - Minutes of award or hiring resolutions (if applicable)
  - Debarment verification
  - All submission requirements
  - All HUD riders
  - Davis-Bacon Act/prevailing wage determination
  - Labor standards requirements
  - Section 3 requirements
  - Sample contract (recommended, not required)
  - Copy of notice to award

Any relevant documentation related to the communication of the procurement, including responses to questions concerning the procurement, must be included. This documentation can be critical especially when written rationale must be provided for extenuating circumstances.

5.7 Appendices

5.7.1 Appendix A: Award Form

DATE

PROJECT INFORMATION Grant Loan Contract

Program Funding Name:	
Service Area(s):	

SUBRECIPIENT/CONTRACTOR INFORMATION

Name:	
Address:	
Chief Financial Officer:	
Unique Entity Identifier (SAM.gov):	

COMMUNITY DEVELOPMENT INFORMATION

Contact Person:	
Email Address:	
Telephone Number:	

FEDERAL FUNDS INFORMATION

Federal Award Number:		
Federal Award Date:		
Catalogue of Federal Domestic Assistance (Number):		
Total Federal Award Amount:		
Total Federal Funds Award to Recipient:		
Award for Research and Development:	Yes	No
Indirect Cost Rate Approved/Allowed:	Yes	No

GRANT/LOAN AWARD PERIOD

Grant/Loan Award Period:	
Length of Award Period:	

FEDERAL AWARD PROJECT DESCRIPTION

5.7.2 Appendix B: Contractor/Subrecipient Determination Form

Oregon Housing and Community Services
2020 Labor Day Disasters (DR-4562) CDBG-DR

REOregon
Recover · Rebuild · Revitalize

CONTRACTOR/SUBRECIPIENT DETERMINATION FORM:

Instructions:
Review the following description and characteristics per CFR 200.331 for Subrecipient and Contractor determinations. The applying entity is prohibited from receiving both a contract and a subgrant for the same grant. Make a determination of “Subrecipient” or Contractor” after reviewing the applicable information and regulations for the entity subject to review.

Background:
Subrecipients are OHCS’s partners that directly implement an eligible CDBG-DR activity. Subrecipients may be non-profit organizations or Government agencies receiving CDBG-DR funds to carry out eligible activities. The primary distinction between a subrecipient and a contractor lies in the undertaking of the eligible activity. A subrecipient is carrying out the activity on behalf of OHCS, but a contractor is providing goods or services so OHCS may carry out the activity. All or only some of the following listed characteristics may be applicable to the categorization of the entity. When making this determination the substance of the relationship is more important than the form of the agreement.

Subrecipient: A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in § 200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- Determines who is eligible to receive what Federal assistance;
- Has its performance measured in relation to whether objectives of a Federal program were met;
- Has responsibility for programmatic decision-making;
- Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

Contractor: A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in § 200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the Federal program; and
- Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

___________________________________ is classified by _____________________ as a

Entity's Name ☐ **Subrecipient** or ☐ **Contractor** for

Grant Agreement Number: ______________________________

A digital sample of this form is available here:

app.box.com/s/puu8rqji9h77gbsuzby3g920696dx5vh/file/1638549723616

5.7.3 Appendix C: Form for Independent Cost Estimates

Note: This example form lends itself better to independent cost estimate for architectural, engineering, and other professional services. For construction projects, a licensed engineer or architect can provide an independent cost estimate based on the technical specifications provided. For residential construction, a qualified inspector can provide an independent cost estimate based on nationally recognized construction cost software like Xactimate or RS Means.

Independent Cost Estimate Sheet

<table>
<tr><td>Project Name</td><td>Due Date of RFP/RFQ</td></tr>
<tr><td>Street Address</td><td></td></tr>
<tr><td>City, State, ZIP</td><td>Total Price
$</td></tr>
</table>

<table>
<tr><td colspan="4">A. <u>Direct Labor</u>
Attach a copy of the scope of services identified in the RFP/RFQ. Each task identified in the scope of services should be assigned an estimated amount of time for completion. The total amount of time identified on the scope of services should correspond to the estimate in this</td></tr>
<tr><td>Job Title
(e.g., Architect, Draftsman, etc.)</td><td>Est. # of Days</td><td>Daily Rate</td><td>Est. Cost</td></tr>
<tr><td>1.</td><td></td><td></td><td></td></tr>
<tr><td>2.</td><td></td><td></td><td></td></tr>
<tr><td>3.</td><td></td><td></td><td></td></tr>
<tr><td>4.</td><td></td><td></td><td></td></tr>
<tr><td>5. Total Direct Labor</td><td></td><td></td><td></td></tr>
<tr><td>B. <u>Overhead/Indirect Costs</u></td><td><u>Rate</u></td><td><u>Base</u></td><td><u>Est. Cost</u></td></tr>
<tr><td colspan="4">C. <u>Other Direct Costs</u></td></tr>
<tr><td>Transportation</td><td>Est. # of Site Visits</td><td>Rate</td><td>Est. Cost</td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td>Per Diem</td><td>Est. # of Days</td><td>Daily Rate</td><td>Est. Cost</td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td>Reproduction</td><td>Est. # of Pages</td><td>Page Rate</td><td>Est. Cost</td></tr>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td colspan="3">Other (specify)</td><td>$</td></tr>
<tr><td colspan="3">1.</td><td>$</td></tr>
<tr><td colspan="3">2.</td><td>$</td></tr>
<tr><td colspan="3">3.</td><td>$</td></tr>
<tr><td colspan="3">4.</td><td>$</td></tr>
<tr><td colspan="3">5. Total Other Direct Costs</td><td>$</td></tr>
</table>

D. <u>Subcontracts</u>			
Type of Subcontractor(s)	Est. # of Days	Daily Rate	Est. Cost
1.			
2.			
3. Total Subcontractor Costs			
Total Estimated Costs (Lines A5+B+C5+D3)			**$**
Profit			$
TOTAL ESTIMATED PRICE			**$**

5.7.4 Appendix D: Procurement Method Table

Procurement Type	Solicitation Method	Cost Methodology Reasonableness	Contract Type	Applications	Federal Dollar Thresholds
Micro-Purchase Requirements	No solicitation required	Price analysis	1. Fixed order 2. Fixed price	Supplies, produced items, single task service	Under $2,000 for construction, under $10,000 for all other purchases[9]
Small Purchase	Price or rate quotations — an adequate number (at least two) Submitted bids	Price analysis	1. Fixed order 2. Fixed price	Supplies, produced items, single task service	$250,000[10] or less for produced items, $250,000 or less for non-construction services

[9] In October 2024, the threshold will increase to $50,000 and can be confirmed by checking the micro-purchase threshold at 48 CFR Part 2.10 at ecfr.gov/current/title-48/part-2/subpart-2.1#p-2.101(Micro-purchase%20threshold). Subrecipient's local procurement rules may have a lower dollar value threshold to procure using the small purchase method. Each entity should determine what the applicable threshold is and if an informal or formal procurement method should be used.

[10] Subrecipient's local procurement rules may have a lower dollar value threshold to procure using the small purchase method. Each entity should determine what the applicable threshold is and if an informal or formal procurement method should be used. For example, ORS 279B.070 allows for a specific set of procedures that align with small purchases for contracts ranging from $25,000 to $250,000.

Procurement Type	Solicitation Method	Cost Methodology Reasonableness	Contract Type	Applications	Federal Dollar Thresholds
Sealed Bid Formal Advertising	Submitted bids	Price analysis, Cost analysis	Fixed price	Construction items, produced or designed items	All construction contracts including less than $250,000, produced or designed items over $250,000
Competitive Proposals	Submitted proposals	Price analysis, cost analysis	1. Cost reimbursement 2. Fixed price 3. Time and materials	Professional services, multi-task services, designed items	Professional services and/or multi-task services over $250,000, designed items over $250,000 when sealed bids are not appropriate

Procurement Type	Solicitation Method	Cost Methodology Reasonableness	Contract Type	Applications	Federal Dollar Thresholds
Non-Competitive Proposals[11]	Submitted proposals	Cost analysis	1. Cost reimbursement 2. Fixed price 3. Time and materials	Professional services, single task service, multi-task services, designed items	Aggregate value does not exceed $2,000 for construction, aggregate value does not exceed $10,000 for all other purchases

[11] Additional circumstances may allow for the use of a noncompetitive procurement described in detail at Section 5.6.2.1.5.

5.7.5 Appendix E: Required Contract Clauses for Use When Procuring Projects Using Federal Funds (2 CFR Part 200 — Appendix II)

- Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide appropriate sanctions and penalties. 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 affected and the basis for settlement.
- **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."
- **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 U.S. 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 U.S. 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 U.S. 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/she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- **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 U.S. 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, materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
- **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.
- **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).

- **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 SAM, in accordance with the Office of Management and Budget 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.
- **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.
- **Procurement of recovered materials.** 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 the 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 that maximizes energy and resource recovery, and establishing an affirmative procurement program for recovered materials identified in the EPA guidelines.
- **Prohibited telecommunications and video surveillance services or equipment.** Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract), procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary

or affiliate of such entities). For public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) is required. Telecommunications or video surveillance services are provided by such entities or using such equipment. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by or otherwise connected to the government of a covered foreign country. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions, and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services to procure replacement equipment and services, and sustain communications service to users and customers. See Public Law 115-232, section 889 for additional information. See also 2 CFR § 200.471.

- **Buy America Preference.** As appropriate and to the extent consistent with the 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. For purposes of this section, “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, occur in the United States. “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. Federal agencies providing federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.