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| **Guide for Review of Procurement** | | | | |
| **Name of Program Participant:** | | **Appropriation(s):** | | |
| **Staff Consulted:** | | | | |
| **Name(s) of Reviewer(s):** |  | | **Date:** |  |

**NOTE:** Chapter 2 of the monitoring handbook, an important and fundamental principle of the monitoring process. HUD is required to make findings when there is evidence that a statute, regulation or requirement has been violated, but it retains discretion in identifying appropriate corrective action(s) to resolve deficiencies. An equally fundamental principle is that program participants have due process rights to contest findings (24 CFR 570 Subpart O for local governments and 24 CFR 570.495 for state grantees (in some cases, applicable waivers and alternative requirements may subject states to subpart O)).

As provided in Chapter 2, HUD reviewers are advised that certain questions contain, as a parenthetical below the question, statutory or regulatory citations and/or contract/agreement references. A negative response (“No”) by the HUD reviewer to any such question indicates noncompliance that constitutes a “finding.” Including the basis for the requirement enables the entity being monitored to specifically reference the program requirement at issue. That entity is not precluded from self-assessing during the monitoring to determine if it has information or documentation that would cause the HUD reviewer to form a different conclusion.

In this exhibit, most questions that address requirements contain the specific citation for the source of the requirement (specific citation to a section of a statute, regulation, *Federal Register* notice, or grant agreement). Where a specific citation is contained in the question, it may only apply to certain grants; carefully review the cited requirement to determine its applicability.

In other cases, the question generally references the source of the requirement (e.g., applicable *Federal Register* notices or grant agreement) but does not provide a specific citation. This is because statutory requirements, *Federal Register* notices (including waivers and alternative requirements), and grant agreements can vary significantly from appropriation to appropriation, and waivers and alternative requirements may vary from grantee to grantee. When the question contains a general reference to a source, the reviewer is instructed to review the source to confirm that the relevant requirement that relates to the question is contained in the source and applies to the grantee. The reviewer should answer the question based on the requirement that applies to the grantee. If the reviewer answers the question “no” because the grantee did not comply with the requirements in the source that apply to the grantee, the HUD reviewer must make a note of the applicable citation to document the violation that results in a finding of noncompliance.

Questions without a specific citation or a general reference to a controlling document do not address requirements. These questions are included to assist the reviewer in understanding the participant's program more fully and to identify issues that, if not properly addressed, could result in deficient performance. Negative conclusions to these questions may result in a "concern" being raised but cannot result in a "finding."

A “Note” included with a question is intended to assist the reviewer with answering the question and is not a statutory or regulatory citation and/or contract/agreement reference that signals that a negative response (“No”) by the HUD reviewer to the question indicates noncompliance that constitutes a “finding.”

**Instructions:** This Exhibit is to be used to monitor a grantee or recipient’s procurement of goods or services through its Community Development Block Grant disaster recovery (CDBG-DR) award. This Exhibit is divided into two sections: All grantees (grantee or recipient, subrecipient or local government recipient); and State grantees (applicable only to state recipients of CDBG-DR funds or other CDBG-DR recipients subject to State CDBG requirements).

To determine how to this exhibit is to be used with respect to policies or procedures used or obligations or expenditures made November 12, 2020, monitors should refer to the latest CPD guidance on the 2020 changes to 2 CFR part 200.

A subrecipient or local government recipient (subgrantee) is defined as an entity that receives funds from a State grantee directly or through a method of distribution.

If the recipient is a subrecipient or unit of general local government that is subject to 2 CFR 200.318 through 2 CFR 200.326 (either because the local government is a grantee, or because the local government receives funds from a State grantee through a method of distribution or as a subrecipient, and the State grantee requires it to follow 2 CFR 200.318 through 2 CFR 200.326 procurement standards), use Exhibit 34-3a *Guide for Review of Procurement*, supplemented by section A of this Exhibit.

For State grantees that direct their local governments or subrecipients to follow procurement requirements at 2 CFR 200.318 through 2 CFR 200.326, the sample of procured transactions should include at least one procurement conducted by a non-State entity. Grantees are required to maintain a summary of all procured contracts, including those procured by the grantee, local governments, or subrecipients, which may be used to select a sample of procurement records for review.

For State grantees that have not adopted procurement standards contained at 2 CFR 200.318 through 2 CFR 200.326, the reviewer should answer Section A and questions 8 through 13 only (derived from Exhibit 4-7, *Guide for Review of Administrative Financial Management Requirements- Section F)*, in section B of this Exhibit.

For State grantee’s subrecipients and local governments where the State grantee has established policies and procedures and have not adopted procurement standards contained at 2 CFR 200.318 through 2 CFR 200.326, the reviewer should answer Section A and questions 8 through 13 only (derived from Exhibit 4-7, Guide for Review of Administrative Financial Management Requirements- Section F), in section B of this Exhibit.

For State grantees that have adopted procurement standards contained at 2 CFR 200.318 through 2 CFR 200.326, the reviewer should answer Section A, questions 14 through 19 in Section C and Exhibit 34-3a, *Guide for Review of Procurement*. However, a Finding of noncompliance resulting from the use of Exhibit 34-3a would be based on the State’s violation of its own policies and procedures, and not directly the procurement requirements at 2 CFR 200.318 through 2 CFR 200.326.

If the grant is funded pursuant to Pub. Law 113-2 (covering 2011-2013 disasters), supplement this exhibit with the Procurement section in the appropriate Addendum (Exhibit 6-11). For grants funded pursuant to Pub. Law 115-56 and/or Pub. Law 115-123 (covering 2017 disasters), supplement this exhibit with the Procurement section in the appropriate Addendum (Exhibit 6-14).

Requirements associated with CDBG-DR grants can vary significantly from appropriation to appropriation, which can result in the applicable regulations, grant agreements, published notices, and general rules of thumb described in these instructions to vary. CPD staff should, therefore, first identify all sources of requirements related to the grant being monitored to determine the applicability of requirements and questions in this Exhibit through reference to Attachment 6-1, “Document Reference Tool,” to determine which *Federal Register* notices are applicable, and make sure to use the applicable Addendum based on the disaster year you are monitoring.

**Questions:**

A. GRANTEES AND RECIPIENTS (including State Grantees)

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|  | If a grantee or recipient is a Unit of General Local Government (UGLG), or a subrecipient of a UGLG receiving a direct award from HUD, has it adopted the procurement standards at 2 CFR 200.318 through 2 CFR 200.326?  **NOTE:** Exhibit 34-3a *Guide for Review of Procurement* should also be used.  [2 CFR 200.318 through 2 CFR 200.326] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |

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|  | If the grantee is a State, has the State indicated the procurement standard it is following?  **NOTE:** The State should clearly identify if it is following its own procurement policies and procedures or if it is adopting the procurement standards contained at 2 CFR 200.318 through 2 CFR 200.326. The certification of proficient procurement processes should be reviewed, if applicable. A reviewer should refer to the grantee’s certification of procurement processes to determine that the procurement policies and procedures identified by the grantee align with the procurement standard identified in their certification.  [See applicable *Federal Register* notice] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |

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|  | If the grantee is a State that is using one or more subrecipients or distributing funds to local governments, has the State clearly indicated the procurement standard that subrecipients and local governments are required to follow?  **NOTE:** The certification of proficient procurement process should be reviewed, if applicable. A reviewer should refer to the grantee’s certification of proficient procurement processes to determine that the procurement policies and procedures identified by the grantee align with the procurement standard identified in their certification. If the State imposes 2 CFR 200.318 through 2 CFR 200.326 on its subgrantees and subrecipients, use Exhibit 34-3a, *Guide for Review of Procurement* for any procurement transactions conducted by a subrecipient or local government of the State. | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |

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|  |  | Use the following table to list the selected sample of procurement transactions reviewed: | | | | |
|  |  | **Contractor** | **Name of Procuring Entity** | **Solicitation or Contract Number** | **Contract Amount** | **Procurement Method\*** |
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**\***Procurement Method (2 CFR 200.320, 24 CFR 570.489(g)): (a) micro-purchases; (b) small purchase; (c) sealed bids; (d) competitive proposals; (f) noncompetitive proposals; (x) other method based on full and open competition allowable under 24 CFR 570.489(g).

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|  | 1. Is the grantee following the same procurement standards that it provided to HUD for the certification of “proficient procurement processes” prior to the execution of the grant award?   [See applicable *Federal Register* notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| 1. If no, has the Secretary certified or HUD approved the grantee’s revised procurement processes are proficient to meet the certification requirements contained within the applicable *Federal Register* notices?   [See applicable *Federal Register* notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | Has the grantee posted the following to its website: | |
| Procurement policies and procedures?  **NOTE:** This is generally a requirement since 2015. Check the requirement around types of contracts that must include this in the applicable *Federal Register* notice(s).  [See applicable Federal Register notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | | |
| A copy of contracts that grantee has procured directly?  **NOTE:** This is generally a requirement since 2015. Check the requirement around types of contracts in the applicable *Federal Register* notice(s).  [See applicable Federal Register notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | | |
| The description of services or goods currently being procured by the grantee?  **NOTE:** This is generally a requirement since 2015. Check the requirement around types of contracts in the applicable *Federal Register* notice(s).  [See applicable Federal Register notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | | |
| A summary of all procured contracts, including those procured by the grantee, local government, or subrecipients (e.g., phase of the procurement, requirements for proposals, and any liquidation of damages associated with a contractor’s failure or inability to implement the contract, etc.)?  **NOTE:** This is generally a requirement since 2015. The Contractor Reporting Template can be accessed at [https://files.hudexchange.info/ resources/documents/CDBG-DR-Procurement-Example-Contract-Reporting-Template.xlsx](https://files.hudexchange.info/resources/documents/CDBG-DR-Procurement-Example-Contract-Reporting-Template.xlsx)  [See applicable Federal Register notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | | |
| **Describe Basis for Conclusion:** | | |
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|  | In each reviewed contract with contractors used to provide discrete services or deliverables, has the grantee clearly stated the period of performance or the date of completion?  **NOTE:** This is generally a requirement since 2015.  [See applicable *Federal Register* notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |

B. STATE GRANTEES THAT HAVE **NOT** ADOPTED 2 CFR 200.318 — 2 CFR 200.326 ONLY

For State grantees that have not adopted procurement standards contained at 2 CFR 200.318 through 2 CFR 200.326, the reviewer should answer Section A, questions 8 through 13 only (derived from Exhibit 4-7, *Guide for Review of Administrative Financial Management Requirements- Section F)*, in section B of this Exhibit.

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|  | Does the state follow its own procurement policies and procedures when procuring property or services as the state?  [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | 1. Has the state established requirements for procurement policies and procedures for local governments?   [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| 1. Are the policies and procedures based on full and open competition?   [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| 1. Is the method(s) of procurement prescribed?   [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| 1. Are the following methods precluded: *Cost plus a percentage of cost* and *percentage of construction costs*?   [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| 1. Do the policies and procedures include standards of conduct for employees engaged in the award or administration of contracts (i.e., conflict of interest)?   [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| 1. Does the state ensure that all purchase order and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations?   [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | If the state is acting as a pass-through entity, is the grantee making the appropriate determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor?  **NOTE**: 2 CFR 200.330 provides the characteristics of subrecipient and contractor relationships, noting that not all of the characteristics listed may be present in all cases, and the grantee must use judgment in classifying each agreement as a subaward or a procurement contract.  [2 CFR 200.330 and 24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | Has a conflict of interest occurred for which the state or the local government has not requested and received an exception pursuant to 24 CFR 570.489(g)?  **NOTE**:   * The procurement actions covered here do NOT include: procurement of supplies, equipment, construction, and services by the states, local governments, and subrecipients, (eligible administrative or personnel costs are also excluded). * The *persons covered* include: * any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies * subrecipients which are receiving CDBG funds. * Any *persons covered* who: * exercise or have exercised any functions or responsibilities with respect to CDBG activities * are in a position to participate in a decision-making process * gain inside information with regard to such activities   May not:   * obtain a financial interest or benefit from the activity * have an interest or benefit from the activity   + have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.   [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | If a local government has requested an exception to the conflict of interest provisions, has the state properly documented its determination and made that documentation available for review by the public and by HUD?  **NOTE**:   * 24 CFR 570.489(g) requires documentation of:   + 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**   + An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law. * The state must also document is position with respect to the following:   + Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;   + Whether an opportunity was provided for open competitive bidding or negotiation;   + 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;   + 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;   + Whether the interest or benefit was present before the affected person was in a position as described in 24 CFR 570.489(g);   + Whether undue hardship will result either to the state or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; **AND**   + Any other relevant considerations.   [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | Did the state and local governments take the required steps to determine if covered contracts and subcontracts were being entered into with excluded or disqualified persons (i.e., debarred or suspended)?  **NOTE:** This typically includes a printout of search results on SAM.gov conducted prior to the execution of the contact.  [24 CFR 570.489(l) and 2 CFR 2424.300] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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C. STATE GRANTEES THAT HAVE ADOPTED 2 CFR 200.318 — 2 CFR 200.326 ONLY

For State grantees that have adopted procurement standards contained at 2 CFR 200.318 through 2 CFR 200.326, the reviewer should answer Section A, questions 14 through 19 in Section C and Exhibit 34-3a, *Guide for Review of Procurement*.

**NOTE:** A finding of noncompliance resulting from the use of Exhibit 34-3a would be based on the State’s violation of its own policies and procedures, and not directly the procurement requirements at 2 CFR 200.318 through 2 CFR 200.326.

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|  | Is the State grantee monitoring its subrecipients and local governments recipients (subgrantees) for compliance with procurement standards?  **NOTE:** Procurement standards may be 2 CFR 200.318 through 326, the state’s established procurement policies and procedures, based on full and open competition, or other allowable method  [24 CFR 570.489(g), 24 CFR 570.489(m), 24 CFR 570.492, and applicable *Federal Register* notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | Do the policies include standards of conduct governing employees engaged in the award or administration of contracts?  **NOTE:** This is distinct from the conflict of interest provisions described in 24 CFR 570.611(b)  [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | Did the state review contracts to ensure that they are in compliance with the applicable policies and procedures?  [24 CFR 570.489(g), 24 CFR 570.489(m), 24 CFR 570.492, and applicable *Federal Register* notices] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | Do the reviewed contracts confirm that neither of the following cost methods — cost plus a percentage of cost, or percentage of construction cost — were used?  **NOTE:** Per §570.489(g), the cost methods of “cost plus a percentage of cost” and “cost plus a percentage of construction costs” are not allowed. “Cost plus a percentage of cost” contracts are those in which the amount of profit paid is calculated as a percentage of cost, so that profit increases commensurate with increases in cost. In other words, the fee rises as the contractor's costs rise. “Cost Plus a Percentage of Construction Costs” contracts are those in which the amount of profit paid is calculated as a percentage of construction costs, so that profit increases commensurate with increases in construction cost. Both types are disallowed because they provide little incentive for the contractor to control costs, and there is limited certainty as to the final contract amount. Time and Materials contracts are not considered a cost-plus percentage of cost contract and are allowable.  [25 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | Is the State’s contracting complying with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations in 24 CFR part 135?  **NOTE:** Section 3 requires that employment and other economic opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.  [24 CFR 570.487(d)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
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|  | Do all reviewed contracts include clauses required by federal statutes, executive orders and implementing regulations (e.g., those found in Appendix II to 2 CFR 200)?  [24 CFR 570.489(g)] | |  |  |  | | --- | --- | --- | |  |  |  | | **Yes** | **No** | **N/A** | |
| **Describe Basis for Conclusion:** | |
|  | |