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Procurement Checklist Uniform Guidance

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The Uniform Guidance requires local governments to have written procurement procedures in place that address the below:

| Procurement Standards <small>2 CFR Part 200, Subpart D</small> | References |
|---|-------------------|
| All solicitations must incorporate a clear and accurate description of the technical requirements for the material, product or service. | 200.319(d)(1) |
| Ensure that procurements are conducted in a manner affording full and open competition. | 200.319(a) |
| Prohibit contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals from competing for such procurements. | 200.319(b) |
| Avoid the following situations considered to be restrictive of competition: <ol style="list-style-type: none"> 1. Placing unreasonable requirements on firms to qualify them to do business; 2. Requiring unnecessary experience and excessive bonding; 3. Noncompetitive pricing practices between firms or affiliated companies; 4. Noncompetitive contracts to consultants on retainer contracts; 5. Organizational conflicts of interest; 6. Specifying "brand name" without allowing for an equal substitute; and 7. Any arbitrary action in the procurement process. | 200.319(b) |
| Must not include state or local geographic preferences (except if mandated or encouraged by applicable Federal law). | 200.319(c) |
| Avoid acquisition of duplicate or unnecessary items. | 200.318(d) |
| Require a cost or price analysis for purchases over \$250,000 (Simplified Acquisition Threshold). | 200.324 |

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| Provide guidelines for quote and bid thresholds. | 200.320 |
| Describe available methods of procurement: <ol style="list-style-type: none"> 1. Informal – quotes; 2. Formal – sealed bidding and competitive contracting; and 3. Noncompetitive procurements – emergency, sole source. | 200.320 |
| Requests for proposals must identify: <ol style="list-style-type: none"> 1. All requirements the offeror must fulfill; and 2. All other factors to be used in evaluating proposals. | 200.319(d)(2) |
| Provide a preference for the purchase, acquisition, or use of goods or materials produced in the U.S. to the greatest extent practicable. | 200.322 |
| Limit the use of time-and-materials type contracts unless: <ol style="list-style-type: none"> 1. No other contract is suitable; 2. The time-and-materials contract includes a ceiling price; and 3. The contractor agrees to proceed at its own risk if the ceiling price is exceeded. <p>Time-and-materials contracts are contracts whose cost is the sum of direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.</p> | 200.318(j) |
| Include affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus areas firms are used when possible. | 200.321 |
| Require review of SAM prior to contract award to prevent awarding to a contractor who has been debarred or suspended from federal contracting. | 200.214 |
| For construction or facility improvement contracts, require: <ol style="list-style-type: none"> 1. A bid guarantee = 5 % of bid price; 2. Performance bond = 100% of contract price; and 3. Payment bond = 100% of contract price. <p>Reminder: If federal funding requires compliance with the Davis-Bacon Act, require the higher of Davis-Bacon or New Jersey prevailing wage rates.</p> | 200.326 |
| Require record retention which details the history of the procurement, including: <ol style="list-style-type: none"> 1. Rationale for the method of procurement; 2. Rationale for the selection of the contract type; 3. Rationale for the contractor selection or rejection; and 4. Basis for the contract price. | 200.318(i) |
| Adopt a written conflict of interest policy governing actions of the entity’s employees during the selection, award, and administration of contracts. | 200.318(c)(1) |

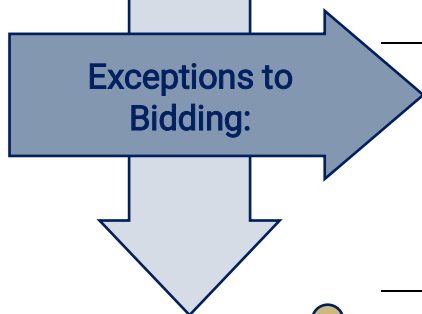
Uniform Guidance – By Procurement Phase



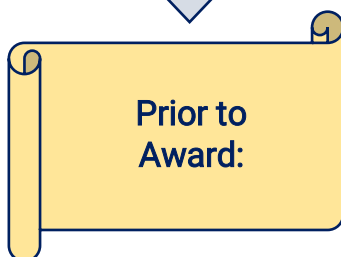
- Adopt written purchasing procedures that conform to the federal rules
- Adopt written standards of conduct for conflicts of interest and governing the actions of employees and public officials involved in the selection, award or administration of the contract
- Exclude contractors who develop or draft specifications, requirements, statements of work invitations for bids, or requests for proposals from competing for such procurements
- Conduct a price or cost analysis for every procurement in excess of the SAT
- Avoid the acquisition of unnecessary or duplicative items
- Document procurement method rationale



- Full and open competition
- Only use authorized procurement methods
- Avoid unreasonable requirements to qualify bidders
- Bid Bond is limited to 5%
- Use brand name "or equal"
- No geographic limitations on bidders
- Take affirmative steps to ensure minority businesses and women's business enterprises are used
- Specifications and scope of work must be clear and specific
- RFP's must include all evaluation criteria
- Avoid time and materials contracts
- Include all federally required contract clauses as required by 2 CFR Part 200, Appendix II.



- Item is only available from a single source
- Public exigency
- After solicitation of a number of sources, competition is determined to be inadequate
- Your federal award expressly allows noncompetitive procurement



- Award only to responsible contractors
- Do not contract with a debarred or suspended vendor or contractor
- Document the award based on:
 - Lowest responsible bidder
 - Most advantageous, price and other factors

Procurement Checklist

Local Public Contracts Law

State Statutory Requirements – All Contract Types

| Requirements | References |
|--|---|
| OSC Record Retention Language | <i>N.J.A.C.17:44-2.2</i> |
| Statement of Corporate Ownership | <i>N.J.S.A.52:25-24.2</i> |
| Business Registration Certificate | <i>N.J.S.A.52:32-44</i> |
| Affirmative Action and Equal Employment Opportunity – Include “Exhibit A” in all goods & services contracts. | <i>N.J.S.A.10:5-31; N.J.A.C.17:27</i> |
| Disclosure of Investment Activities in Iran | <i>N.J.S.A. 52:32-55 et seq.; N.J.S.A. 40A:11-2.1</i> |
| Annual Political Contribution Disclosure | <i>N.J.S.A. 19:44A-20.27</i> |
| Prompt Payment Act – Goods and Services | <i>N.J.S.A. 40A:11-19.1</i> |
| Acknowledgement of Addenda | <i>N.J.S.A. 40A:11- 23.1</i> |
| Set-Aside Contracts, if applicable, must be in the advertisement | <i>N.J.S.A.40A:11-41 to 49</i> |
| Buy American | <i>N.J.S.A. 40A:11-18</i> |

State Statutory Requirements – Public Works Contracts

| Requirements | References |
|--|---|
| Prompt Payment Act | <i>N.J.S.A.2A:30A- 1 etseq.</i> |
| Public Works Contractor Registration Act | <i>N.J.S.A. 34:11-56.48 et seq.</i> |
| N.J. Prevailing Wage Act | <i>N.J.S.A.34:11-56.25 et seq.</i> |
| Affirmative Action and Equal Employment Opportunity – Include “Exhibit B” in all construction contracts. | <i>N.J.S.A. 10:5-31; N.J.A.C. 17:27</i> |
| Mandatory Anti-Discrimination Language | <i>N.J.S.A. 10:2-1</i> |
| Federal Debarment Certification | <i>N.J.S.A.52:32-44.1</i> |
| Bid Guarantee | <i>N.J.S.A. 40A:11-21</i> |
| Consent of Surety | <i>N.J.S.A. 40:11-22</i> |

OSC Forms & Additional Resources:

Office of the State Comptroller Submission Forms

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| OSC Homepage: https://nj.gov/comptroller/ | |
| Pre-advertisement Notification for contracts valued at \$12.5 million or more (Forms B1 and B2) | Pre-Advertisement Notification (Form B1) https://www.nj.gov/comptroller/about/work/procurement/docs/osc_compliance_form_12_5b1_pre.pdf |
| | Post-Award Notification (Form B2) https://www.nj.gov/comptroller/about/work/procurement/docs/osc_compliance_form_12_5b2_post.pdf |
| Post-award Notification for contracts valued at \$2.5 million or more but less than \$12.5 million (Form A) | https://www.nj.gov/comptroller/about/work/procurement/docs/osc_compliance_forma_2_5m.pdf |
| Post-award Notification for emergency contracts valued at \$2.5 million or more (Form D) | https://www.nj.gov/comptroller/about/work/procurement/docs/osc_compliance_formd_emergency.pdf |

Links to Useful FEMA Guidance

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| FEMA Homepage: https://www.fema.gov/ | |
| FEMA Federal Procurement Requirements Checklist for Non-State Entities | https://www.fema.gov/gu/assistance/public/nonstate-nonprofit/procurement-checklist |
| FEMA Contract Provisions Guide, June 2021 | https://www.fema.gov/sites/default/files/documents/fema_contract-provisions-guide_6-14-2021.pdf |
| FEMA Public Assistance: Buying Through Cooperative Purchasing Programs | https://www.fema.gov/gu/assistance/public/nonstate-nonprofit/cooperative-purchasing-program |

Text of 2 CFR 200, Appendix II

Current through the September 29, 2021 issue of the Federal Register.

2 CFR 200, Appendix II

Appendix II – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), 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 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.

(K) See § 200.216.

(L) See § 200.322.

END 2 CFR 200, Appendix II