

**STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS**  
**DIVISION OF DISASTER RECOVERY AND MITIGATION**

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**SUBJECT:** Procurement Policy

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**NUMBER:** 2.10.2

**EFFECTIVE:** March 2013

**REVISED:** July 2015

June 2016

May 2019

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October 2024

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**APPROVAL:**



Samuel R. Viavattine  
Deputy Commissioner

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**OVERVIEW:**

The State of New Jersey (hereinafter referred to as “N.J.”, “State” or “Grantee”) is a recipient of federal funds, including, but not limited to the following sources:

- Community Development Block Grant – Disaster Recovery (“CDBG-DR”) Funds, overseen by the U.S. Department of Housing and Urban Development (“HUD”)
- American Rescue Plan Act (“ARPA”), Coronavirus State Fiscal Recovery Funds (“CSFRF”), overseen by the U.S. Treasury (“UST”)
- ARPA, Capital Projects Funds (“CPF”), overseen by the UST
- Flood Mitigation Assistance and Hazard Mitigation Grant Program, overseen by the Federal Emergency Management Agency (“FEMA”)

**Compliance with HUD Procurement Rules**

The 2013 Superstorm Sandy CDBG-DR funding was made available pursuant to the Disaster Relief Appropriations Act of 2013, Public Law 113-2 and distributed by HUD. HUD published Federal Register Notice 78 FR 14329 on March 5, 2013 (“March 2013 Notice”), detailing certain requirements the State was required to meet before HUD would fully obligate the CDBG-DR funds. The March 2013 Notice requires State Grantee procurement processes to be equivalent to the procurement standards in 24 C.F.R. § 85.36, hereinafter amended and superseded by the procurement standards of 2 C.F.R. § 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (“Uniform Requirements”).

The State received two rounds of Ida CDBG-DR funding. The first round of Ida CDBG-DR funding was made available pursuant to the Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117– 43) and distributed by HUD. HUD published Federal Register Notice 87 FR 31636 on May 24, 2022 (“May 2022 Notice”). The May 2022 Notice requires State Grantee

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procurement processes to be equivalent to the procurement standards of 2 C.F.R. Part 200, (Uniform Requirements). The second round of Ida CDBG-DR funding was made available pursuant to the Continuing Appropriations Act, 2023 (Pub. L. 117–180) and allocated by HUD in 88 FR 3198 (January 18, 2023) (“January 2023 Notice”). Moreover, the January 2023 Notice requires State Grantees to adopt procurement policies that mirror the Uniform Requirements.

Pursuant to the March 2013 Notice, the State submitted a written procurement policy to HUD, noting that all procurements using CDBG-DR funds would be processed through the Division of Purchase and Property (“DPP”), and certified that those procedures were equivalent to the federal procurement requirements set forth in 24 C.F.R. § 85.36. By Memorandum dated April 29, 2013, HUD indicated that it had “reviewed the financial control materials submitted by the State” and “the State of New Jersey has demonstrated adequate financial controls, procedures and processes,” and certified that “the State of New Jersey has in place proficient financial controls and procurement processes.” The equivalency is detailed in this policy beginning on page four (4).

On February 17, 2015, the State inquired, and HUD confirmed that the State can procure goods and services through other State agencies with procurement authority (e.g., Division of Property Management & Construction (“DPMC”)) so long as applicable procurement processes are substantially similar to those certified by HUD. DPMC is the State agency responsible for procuring construction-related services and is granted procurement authority in N.J.S.A. §§ 52:18A-151 and 153. As detailed throughout this policy, DPMC’s procurement processes are substantially similar to those utilized by DPP.

Effective December 26, 2014, HUD amended 24 C.F.R. §§ 84 and 85 and adopted 2 C.F.R. § 200, which applies to Federal awards made on or after December 26, 2014. See 2 C.F.R. § 2400.101. Because the State was awarded Superstorm Sandy CDBG-DR funds prior to December 26, 2014, and “Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 C.F.R. § 85 (2013 edition) or as provided by the terms of the Federal award...” 24 C.F.R. § 85.1, the State was afforded an additional two (2) fiscal years to transition to the implementation of 2 C.F.R. § 200 procurement standards. The State has fully transitioned to the 2 C.F.R. § 200 standards.

### **Procurement Standards for Federal Grants**

Procurement standards for grantees are codified in 2 C.F.R. §§ 200.317-200.327. 2 C.F.R. § 200.317 provides that “a state must follow the same policies and procedures it uses for procurements from its non-Federal funds.” See also 24 C.F.R. § 570.489(g) (when procuring

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goods and services using federal funds, “the State shall follow its procurement policies and procedures”).

For consistency and simplicity, all other non-Federal entities, including subrecipients/subgrantees of the State who are not State entities, shall follow 2 C.F.R. § 200.318 “General Procurement Standards” through 200.327 “Contract Provisions,” unless the requirement is waived under the terms of the Federal grant.<sup>1</sup> Additionally, the Division of Disaster Recovery and Mitigation (“DRM”), Monitoring Unit monitors each program in receipt of federal funding. This review includes documents related to subrecipient/subgrantee procurements.

All procurement activities shall adhere to the principles and standards governing federal grant distribution or their equivalent in State law, and all applicable State procurement laws, except where the requirement is waived under the terms of the Federal grant.<sup>2</sup>

DPP, within the N.J. Department of the Treasury, is the State’s central procurement agency. DPMC, also a division in the N.J. Department of the Treasury, is the State agency responsible for overseeing construction-related procurements. Although DCA and other State agencies may possess their own statutory procurement authority, all procurements that are paid with federal funds overseen by DRM will be processed through DPP and DPMC (for construction-related projects) to ensure compliance with 2 C.F.R. § 200.317 and fair and open competition.

Based on the statutes and administrative regulations cited below, the different methods of procurements undertaken by DPP are: contracts under \$250,000<sup>3</sup> procured through a state agency’s Delegated Purchase Authority for Goods and Services (“DPA contracts”); contracts fitting one of the subject matters listed in N.J.S.A. 52:34-8 *et. seq.*<sup>4</sup> that can waive the formal rules of advertising (“waivers”); contracts with pricing based on federal supply schedules, such as the U.S. General Services Administration (“GSA contracts”)<sup>5</sup>; and traditional term contracts. The first three methods of procurements are considered informal methods of procurement;

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<sup>1</sup> Recipients of SFRF funds under Expenditure Category 6 are not required to follow Federal procurement requirements. U.S. Treasury, Coronavirus State and Loc. Fiscal Recovery Funds Final Rule: Frequently Asked Questions, (November 2023) <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf>.

<sup>2</sup> See Footnote #1.

<sup>3</sup> The amount is set in N.J.S.A. § 52:34-7 and is subject to change.

<sup>4</sup> Also described in N.J.A.C. § 17:12-1A.2(c).

<sup>5</sup> N.J.S.A. § 52:34-6.1 also allows contracts to be based on the federal supply schedules of the Department of Veterans Affairs (“VA”) and the Defense Logistics Agency (“DLA”).

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however, competition is still required except for contracts under \$10,000 and sole source procurements. Term contracts require formal, advertised procurements.

With regard to GSA contracts, New Jersey does *not* purchase *through* [GSA eBuy](#) or other federal procurement schedules; rather, State law authorizes the Director of DPP to “promulgate the Federal Supply Schedules of the Federal GSA or schedules from other federal procurement programs ...**as an alternate price guide** for the purchase of goods and services,” which in turn permits DPP to create a State contract based upon the federal pricing. N.J.S.A. § 52:34-6.1. The overarching purpose of this process is to obtain goods and services that are most advantageous to the State, price and other factors considered, while maintaining a level playing field for all vendors through competition and transparency.

For reference, DPP statutes are found at N.J.S.A. §§ 52:34-6 *et seq.* and administrative regulations pertaining to DPP operations are found at N.J.A.C. §§ 17:12 *et seq.* DPMC is also bound by N.J.S.A. §§ 52:34-6 *et seq.* and statutes relating to DPMC are found at N.J.S.A. §§ 52:35 *et seq.* (classification of contractors), N.J.S.A. § 52:32-2 (award of construction contracts), and N.J.S.A. §§ 52:34-25 *et seq.* (energy savings improvements projects). Administrative regulations pertaining to DPMC procurement can be found at N.J.A.C. §§ 17:19-3.1 to -3.11.

**The following outlines how the State’s procurement processes are equivalent to the procurement standards set forth in 2 C.F.R. §§ 200.318—200.327.**

#### **2 C.F.R. § 200.214 Suspension and Debarment**

*“Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. part 180. These regulations in 2 C.F.R. part 180 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 awarding a contract using federal funds, DCA consults the Federal System for Award Management (“SAM”) for listings of contractors suspended, proposals for debarment and debarment. DPP also maintains a central debarment list and its causes for debarment are set forth at N.J.A.C. § 17:12-6.3, Causes for debarment of a person(s). Similarly, DPMC maintains a central debarment list and its causes for debarment are found in N.J.A.C. § 17:19-4.1.

In addition, Section 2.10 of the State’s Standard Terms and Conditions, which are applicable to all contracts entered into by the State, requires that “[t]he contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered

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and/or services performed hereunder.” SAM notwithstanding, the State’s administrative regulations, coupled with the State’s Standard Terms and Conditions, will effectively eliminate any debarred or suspended entity from consideration for a disaster recovery contract award.

**2 C.F.R. § 200.317 States.**

*“When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds.”* State statutory law governing procurements, DPP and DPMC administrative regulations, and DPP and DPMC Circulars apply to State procurements regardless of the funding source.

DPP guidance on the procedures for specific types of procurements can be found at: Circular 24-16-DPP (DPA contracts); Circular 24-21-DPP (waivers); and Circular 21-10-DPP (supersedes Circular 21-04, for GSA contracts).

The procedures that govern DPMC’s procurement of consultant management firms are found in N.J.A.C. §§ 17:19-1.1 to 19-5.3.

**2 C.F.R. § 200.318 General Procurement standards.**

**(a):** *“The non-Federal entity must have and use documented procurement procedures consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward.”* DPP documented its procurement procedures in Circulars 21-10-DPP (GSA contracts), 24-16-DPP (DPA contracts), and 24-21-DPP (waivers). These circulars were crafted in accordance with State law, DPP regulations, and applicable Federal law. Namely, DPP adopted the DOD GSA procurement process to ensure full and open competition. Moreover, DPP procurement specialists review procurements on a case-by-case basis to ensure compliance with subject-specific Federal laws. Procurement specialists also monitor State and federal debarment lists as well as political contribution databases for “Pay to Play” conflicts prior to awarding contracts.

For construction contracts, the DPMC regulations found in N.J.A.C. §§ 17:19-1.1 to 19-5.3 are consistent with State and Federal law. Moreover, DPMC has a team of procurement specialists who review procurements for compliance with applicable state and Federal laws, and staff who monitor the State and federal debarment lists.

Note that states and municipalities must have their own written procurement procedures and cannot simply rely on the Federal regulations. Also, if the non-Federal entity is subject to any

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requirements in its non-Federal procurements that are more restrictive than the Federal law, then those requirements must be incorporated into the procurement process.

**(b): “Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.”** DPP maintains a Contract Compliance and Audit Unit (“CCAU”), that is authorized by N.J.A.C. § 17:12-4 to request and audit records related to State procurements, either as discovery related to a complaint or for any other reason to ensure that contractors are performing in compliance with contract terms and conditions. In addition, vendors and agencies are required to submit reports to DPP on a regular basis to ensure that the contracts are performed in accordance with the specified terms.

Additionally, the independent Office of the State Comptroller is responsible for auditing and monitoring the solicitation of proposals and the awarding of State contracts that involve “a significant consideration or expenditure of funds or are comprised of complex or unique components. . .” See N.J.S.A. §§ 52:15C-7 and 52:15C-10. Pursuant to EO 125, the State Comptroller reviews all Sandy-related procurements and contract amendments.

**(c)(1): “The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts...”** Under N.J.S.A. § 52:34-10.3, members of a state agency’s evaluation committee are prohibited from having a personal interest, financial or familial, in any of the contract vendors or its principals it evaluates. To comply with this statute, DPP and DPMC both distribute Confidentiality and Conflict of Interest Forms for evaluation committee members to sign before participating in an evaluation. On the forms, the member must disclose whether they have an interest in the potential bidder or its principals and recuse themselves from the evaluation upon discovering one. Moreover, N.J.S.A. § 52:34-10.3 (c) requires evaluation committee members to possess the relevant experience necessary to evaluate the proposals and mandates that once the contract is awarded, the evaluation committee members’ names and relevant experience serving the basis of their appointment be publicized.

In addition, the Department of the Treasury requires that all employees involved in the “drafting, reviewing, evaluating or making contract awards, or substantively assisting in any of those tasks, or authorizing payments under those contracts” must complete a Personal and Business Relationships Disclosure Form, that is reviewed and approved by the Department’s Ethics Liaison Officer. These forms must be completed annually, and employees are subject to discipline and/or prosecution for submitting false information.

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All State employees are bound by the Uniform Ethics Code that outlines the code of conduct for all employees and is borne from New Jersey's Conflict of Interests Law. The State Ethics Commission administers and enforces the Conflicts of Interest Law, N.J.S.A. §§ 52:13D-12, *et seq.* The Commission consists of seven (7) members: four (4) public members appointed by the Governor to staggered terms and three (3) Executive Branch employees who are appointed by and serve at the pleasure of the Governor. Additionally, the New Jersey Code of Local Government Ethics Law (N.J.S.A. § 40A:9-22.1) provides a written code of standards of conduct that governs the performance of employees engaged in the award and administration of contracts.

The State also maintains a *Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey* ("Guide"). The Guide covers a wide range of business practices and procedures, setting forth basic principles to guide all employees, officers, and directors of companies transacting business with the State of New Jersey. The Guide is publicly available on the Department's website at <https://www.state.nj.us/treasury/purchase/pdf/BusinessEthicsGuide.pdf>.

**(c)(2):** *"If the non-federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest."*

The Department of Community Affairs, DPP, and DPMC are State entities and do not have any parent, affiliate, or subsidiary organizations that are not State entities.

**(d):** *"The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase..."*

Under N.J.A.C. § 17:12-1A.2(b), State agencies may only make purchases pursuant to a DPA if "the purchase is one that cannot be made through a State Contract." Moreover, N.J.S.A. § 52:25-23(a) mandates that purchases or contracts within an agency's fiscal year shall not be divided to circumvent the DPA threshold. In Circular 24-16-DPP, DPP further recommends that where possible, similar goods and services as defined by the State's commodity class code "should be combined as one quote to increase purchasing volume, leading the way to potentially lower prices."

Similarly, to obtain a waiver, Circular 24-21-DPP requires State agencies in their pre-approval request to DPP to show "that the agency has conducted a thorough search of State contracts and that the good or service is not available under State contract." DPP further advises:

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“Minor differences in product specification are not justification for an agency to bypass existing State contracts to obtain certain products.”

With respect to GSA procurements, DPP regulations at N.J.A.C. § 17:12-1A.5 mandate that Federal supply schedule-based contracts will only be promulgated when the following conditions have been met:

1. The price of the good and/or service being procured is no greater than the price offered to Federal agencies;
2. The State receives the benefit of any contract price reductions, whether statutory, regulatory or contractual in nature, during the term of the contract; and
3. The price of the good and/or service under consideration for purchase via a Federal supply schedule contract is not equal to or greater than the State contract price for the same or equivalent goods or services, unless the Director determines that the best interests of the State are served by use of the proposed Federal supply schedule-based contract.

Goods and services obtained through these contracts must be procured in a way that is most advantageous to the State, price and other factors considered.

**(e): “To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into State and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.”** To further leverage the economy of scale provided by the Federal supply schedules, DPP regulations permit local use of State contracts based on Federal supply schedules pursuant to N.J.A.C. § 17:12-2.3. Additionally, as authorized by N.J.S.A. § 52:34-6.2 and promulgated in N.J.A.C. § 17:12-1A.3, DPP may enter cooperative agreements with another state, political subdivision(s) of the State, or a nationally recognized cooperative procurement entity “when the Director deems such agreement to be the most cost-effective contractual solution.”

**(f): “The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.”** The State makes every effort to utilize Federal excess and surplus property when doing so is consistent with State law and Department policy.

**(g): “The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.”**



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The State makes every effort to utilize value engineering clauses for applicable construction projects when doing so is consistent with State law and Department policy.

**(h): “*The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.*”**

At DPP, procurement specialists and evaluation committee members carefully and thoroughly review proposals and mandatory forms to ensure that procurements are awarded to responsible bidders. State law requires that bidders provide evidence of ownership disclosure, political contributions and disclosure of investments in Iran. In addition, the State’s Standard Terms and Conditions mandates that bidders provide disclosure of investigations or other adverse actions prior to award. Proposals are evaluated based on a number of factors, including the bidder’s ability to successfully perform the contract. Procurement specialists are also responsible for monitoring State and federal debarment lists as well as political contribution databases for “Pay to Play” conflicts prior to awarding contracts.

For the procurement of construction services on “public work,”<sup>6</sup> DPMC conducts a consultant selection procedure in accordance with the rules in N.J.A.C. §§ 17:19-3.1 to 17:19-3.11. Consultants interested in bidding on public work must be prequalified by DPMC every two years; only consultants who exhibit competence and experience, based upon a combination of technical qualifications and cost proposals, will be selected to receive bid solicitations. Once prequalified, proposals will then be evaluated based on “[the] firm’s experience on projects of similar size and scope; the project team experience; past project performance; project approach; understanding or project needs; project schedule; budget and cost estimating; and/or other criteria as determined appropriate.” N.J.A.C. § 17:19-3.6.

DPP and DPMC each maintain a central debarment list and the causes for debarment are set forth at N.J.A.C. § 17:12-6.3 for DPP and N.J.A.C. § 17:19-4.1 for DPMC, respectively. This ensures compliance with 2 C.F.R. § 200.214, which restricts awarding federally funded contracts to debarred, suspended, or otherwise excluded parties. In addition, Section 2.10 of the State’s Standard Terms and Conditions, which are applicable to all contracts entered into by the State, requires that “[t]he contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.” These administrative regulations, coupled with the Standard Terms and Conditions,

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<sup>6</sup> "Public work" is defined as “any public building or other public betterment or improvement constructed, repaired or improved wholly or in part at the expense of any agency of government required or permitted to use the DPMC’s classification of contractors and/or prequalification of design consultants.” N.J.A.C. § 17:19-1.1.

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will effectively eliminate any debarred or suspended entity from consideration for a disaster recovery contract award.

Finally, the independent Office of the State Comptroller is responsible for auditing and monitoring the solicitation of proposals and the awarding of State contracts that involve “a significant consideration or expenditure of funds or are comprised of complex or unique components. . .” See N.J.S.A. §§ 52:15C-7 and 52:15C-10. Pursuant to EO 125, the State Comptroller reviews all Sandy-related procurements and contract amendments. Pursuant to EO 166, the State Comptroller reviews all COVID-19 related procurements and contract amendments.

**(i): “The non-Federal entity must maintain records sufficient to detail the history of procurement...”**

As part of DPP’s pre-approval process for all methods of procurements (except for procurements below the micro purchase threshold and sole source procurements), agencies are required to identify vendors that sell the desired goods or services and must obtain price quotes from at least three viable vendors by giving all solicited vendors the same opportunity to provide a price quote and the same information regarding work to be performed. If agency due diligence reveals that fewer than three vendors offer the required good or service, the agency must document this fact.

All research, vendor selection determination and supporting documentation are provided to DPP which is made part of the permanent file and retained by DPP for a minimum of 7 years.

**(j)(1): “The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.”** Every effort is made to avoid the use of time and material contracts. In the limited instances where these contracts are used, the contract complies with the conditions set forth in this subsection. All contracts awarded for recovery efforts will require a task-order process on firm fixed price or a not-to-exceed basis before any expenditure of funds under that contract.

**(k): “The non-Federal entity alone must be responsible... for the settlement of all contractual and administrative issues arising out of procurements...”** All issues arising out of and pertaining to procurements are handled either by the State Contract Manager, DPP, or DPMC. Protests to DPP contracts are handled by DPP Hearing Officers, pursuant to procedures set forth at N.J.A.C. § 17:12-3. Complaints are handled by DPP’s CCAU unit pursuant to procedures set forth at N.J.A.C. § 17:12-4. With regard to protest procedures, the State Contract Manager is also empowered to deal with various administrative procurement issues. Protests handled by DPP

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Hearing Officers are then appealable to the Appellate Division of the New Jersey Superior Court. Finally, protests to DPMC contracts are handled according to procedures provided in N.J.A.C. § 17:19-5.1.

**2 C.F.R. § 200.319 Competition.**

**(a):** *“All procurement transactions for the acquisition of property or services required under the Federal award must be conducted in a manner providing full and open competition...”* The overarching purpose of the State’s procurement process is to obtain goods and services that are most advantageous to the State, price and other factors considered, while maintaining a level playing field for all vendors through competition and transparency.

DPP, through its previous interactions with FEMA in the development of the debris removal contracts, is fully aware of the need to maintain full and open competition and a level playing field for all participants in the procurement process. Namely, the only forms of noncompetitive procurement that DPP allows is for sole-source procurements under N.J.A.C. § 17:12-1A.2(c)(2) and DPA contracts lower than \$1,000 per fiscal year explained in Circular 24-16-DPP. For all other procurement types, the agency must try to pursue competition and obtain at least three (3) quotes. If the agency cannot obtain three quotes after diligent effort, it must justify to DPP “why competition is not reasonable because of circumstances or factors prohibiting or inhibiting the solicitation of competition.” Moreover, advertisement of the bid solicitation is required where a contract does not fall under one of the subject types listed for waivers in N.J.S.A. §§ 52:34-9 and 52:34-10.

Under N.J.S.A. §§ 19:44A-20.13 to -20.25 (“Chapter 51”) and reiterated in Section 2.8 of the State Standard Terms and Conditions, State contracts are required to be procured through a “fair and open process” to avoid the negotiation and award of State contracts from political contributions that pose a risk of improper influence, purchase or access or the appearance thereof. For both DPP and DPMC contracts, if a contract is not advertised, it is considered “a non-fair and open process,” and the contract must include a “Pay to Play Provision” requiring the winning bidder to submit the Two-Year Chapter 51/Executive Order 333 Vendor Certification and Disclosure of Political Contributions for Non-Fair and Open Contracts. The vendor must disclose on the form any political contributions it makes or an entity attributable to it makes.

Specifications, requirements, scopes of work, and requests for proposals are developed by the using agencies in concert with DPP and DPMC are developed in such a way as to ensure fair and open competition. In the event that a procurement is so complex or technical that development of

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a specification requires the assistance or engagement of a contractor by the State, that contractor would be excluded from competing for that procurement or participating as a subcontractor in any resultant contracts.

**(b): “In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such requirements...”** DCA, with the help of DPP or DPMC, make sure that any contractors who aid in drafting of bid solicitation documents are excluded from competing for such contracts. In particular, for waivers of advertising, Circular 24-21-DPP requires the using agency to employ a competitive process that “provide[s] bidders with the same information concerning the work to be performed and the terms and conditions of the proposed contract to ensure that all vendors are treated fairly and have the same opportunity to bid on the same work requirements under the same terms and conditions.” The same requirement applies to GSA contracts and is found in Circular 21-10-DPP. This requirement would eliminate a vendor who prepared the bid solicitation documents from competing for the contract.

**(c): “The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals...”** To combat the perception of local favoritism that can be inferred from such local preference laws, many states have promulgated statutes and regulations to enforce reciprocal action against states and localities. New Jersey is no exception. N.J.A.C. § 17:12-2.13, *Preference laws; out-of-State vendors*, states in part that “. . . the Director shall apply on a reciprocal basis against an out-of-State bidder any in-State preference which is applied in favor of that bidder by the state or locality in which the bidder maintains its principal place of business.”

**(d): “The non-Federal entity must have written procedures for procurement transactions...”** DPP and DPMC each advise bidders of the criteria to be used in the evaluation of proposals and these criteria are clearly described and outlined in the procurement documents. The criteria are weighted by the procurement specialist prior to the proposal submission date and these weights are not disclosed to the bidders until an award has been made. The procurement document sets forth a written description of the technical requirements necessary for bidders to submit a responsive proposal, including but not limited to, delivery and submission requirements, forms and certifications to be included with the proposal, and submittals comprising the technical and price proposals. The procurement documents further set forth the general evaluation criteria to be used in the technical evaluation of the proposal. In addition, a pricing evaluation model is generally

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set forth in the procurement documents which serve as the basis for the ranking of bidder submitted price proposals.

**(e):** *“The non-Federal entity must ensure that all prequalified lists of persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition...”* Currently, DPP does not maintain any prequalification lists for vendors or otherwise related to the procurement of goods or services administered through DPP. In the event that DPP adopts a prequalification procedure in the future, this process will be developed with an eye toward maximizing full and open competition. At times, DPP may procure a multiple award contract to a pool of contractors that have succeeded our advertised competitive process. In those instances, both a task-order based process and a “mini-bid” process will occur before any work is performed under that type of contract.

For construction contracts, DPMC maintains updated lists of prequalified vendors with multiple vendors for each discipline. The procedures governing DPMC's prequalification of construction professionals are found in N.J.S.A. § 34-9 *et seq.*

**(f):** *“Noncompetitive procurements can only be awarded in accordance with § 200.320(c).”* The procedures governing the use of noncompetitive procurements are set forth in Circulars 24-16-DPP (DPA) and 24-21-DPP (waivers) and are equivalent to the standards set forth in 2 C.F.R. § 200.320(c). Additional information is discussed in the next section.

### **2 C.F.R. § 200.320 Methods of procurement to be followed.**

It is difficult to align each specific standard in this subsection with specific State policies; however, the process set forth in Circular 24-16-DPP pertaining to DPA contracts is equivalent to the intent of Federal standards set forth in this subsection by ensuring full and open competition and a level playing field for all bidders by requiring quotes from at least three viable sources, publication of evaluation criteria, clearly written scope of services, a thorough technical evaluation of proposals, and awards to responsible vendors whose proposals are most advantageous to the State, price and other factors considered.

#### **Small Purchases**

Pursuant to Circular 24-16-DPP, for DPA contracts, DPP established thresholds for simplified procurement methods for purchases that do not exceed \$250,000. Micro-purchases, or those valued at less than \$1,000, can be issued without price competition. Purchases between \$1,000

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and \$17,500 may be accomplished by soliciting three (3) telephone quotations, internet quotations, or signed facsimile quotations. To assure fair competition, the agency provides all vendors with the same information about the good or service to be acquired, along with the same terms and conditions. The date and time that each quote is received is noted and the quote is retained. For purchases valued at more than \$17,500 but less than \$250,000, an agency must solicit a minimum of three (3) sealed quotes. The Agency Request for Proposal, which includes the deadline for submissions, is distributed to all vendors at the same time. The agency establishes internal control procedures for acceptance, security, review and evaluation of the sealed quotes. Generally, the vendor with the lowest price is entitled to award, provided that the vendor's proposal fully conforms to the terms and conditions of the agency's specifications and the State's Terms and Conditions.

For sole source purchases under the DPA threshold, pursuant to 24-16-DPP, "a memorandum of sole source justification must be written and signed by the Agency Approval Officer." In addition, the agency must submit to DPP a letter written by the vendor indicating why the vendor is the only vendor that can provide the goods or services. It is important to note that to obtain sole source justification, "a demonstrable need which can be satisfied by only one vendor" must be determined.

In the cases of emergency purchases under the DPA threshold, a single quotation is permitted when "time does not permit competitive prices to be obtained from the required number of vendors." See 24-16-DPP for additional information.

When the Procurement Bureau within DPP conducts an Request for Quotations "RFQ" of a DPA contract, the regular procurement process is completed, albeit in a condensed timeframe. After the RFQ is posted, DPP conducts a question and answer period. The RFQ contains standard terms and conditions and Best and Final Offers (similar to Final Proposal Revisions) are requested from bidders determined to be in the competitive range. After the intent to award is issued, unsuccessful bidders may request a debriefing and if necessary, may submit a protest to the Director. Protests are heard in accordance with N.J.A.C. § 17:12-3. It is the State's intention to use the Procurement Bureau to the maximum extent practicable for all HUD grant funded procurements.

For small construction projects that do not exceed the amounts set in N.J.S.A. § 52:34-7, DPMC allows bidders to utilize DPA contracts in accordance with the procedures provided in Circular 10-16-DPMC. Namely, DPMC requires bidders to seek bids from at least three (3) contractors (where possible) who are on DPMC's approved list of classified contractors.

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**2 C.F.R. § 200.321 Contracting with small and minority firms, women’s business enterprises and labor surplus area firms.**

Section 7.1 of the State Terms and Conditions adopts the provision from 2 C.F.R. § 200.321.

In addition, State law prohibits the establishment of set-aside goals based on race or gender. The State has adopted a goal that 25% of contracts (by dollar value) should be awarded to small businesses, however, and when appropriate, DPP will designate certain contracts or subcontracting opportunities as “Small Business Set Asides.” Finally, pursuant to N.J.S.A. § 52:32-18.1, the Chief Diversity Officer for the Department of Treasury monitors the State’s public contracting process for the purpose of compiling information on the awarding of contracts to diverse businesses for all contract levels. Thus, DPP strongly encourages the use of small, minority, women and veteran-owned New Jersey businesses and invites the successful bidders to utilize these resources.

**2 C.F.R. § 200.322 Domestic preferences for procurements.**

Section 7.2 of the State Terms and Conditions adopts the provision from 2 C.F.R. § 200.322.

**2 C.F.R. § 200.323 Procurement of recovered materials.**

Section 7.3 of the State Terms and Conditions adopts the provision from 2 C.F.R. § 200.323.

**2 C.F.R. § 200.324 Contract cost and price.**

It is difficult to align each specific standard in this subsection with specific State policies; however, the State’s policy overall is equivalent to the intent of the standards set forth in this subsection. Namely, goods and services obtained through any type of contract must be procured in a way that is most advantageous to the State, price and other factors considered.

With respect to GSA contracts, N.J.A.C. § 17:12-1A.5 mandate that Federal supply schedule-based contracts shall only be promulgated when the following conditions have been met:

1. The price of the good and/or service being procured is no greater than the price offered to Federal agencies;
2. The State receives the benefit of any contract price reductions, whether statutory, regulatory or contractual in nature, during the term of the contract; and
3. The price of the good and/or service under consideration for purchase via a Federal supply schedule contract is not equal to or greater than the State contract price for the

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same or equivalent goods or services, unless the Director determines that the best interests of the State are served by use of the proposed Federal supply schedule-based contract.

Therefore, this cost analysis must be undertaken by the agency prior to submission to DPP as part of the pre-approval process outlined in the Circular. When the Procurement Bureau itself conducts an RFQ posted through GSA, the regular procurement lifecycle is completed, albeit in a condensed timeframe. After the RFQ is posted, a question and answer period is conducted. The RFQ contains standard terms and conditions and Best-and-Final Offers (“BAFOs”) are requested from bidders determined to be in the competitive range. Depending on the dollar value of the procurement, a DPP pricing analyst will also review the reasonableness of the pricing prior to award. After the intent to award is issued, unsuccessful bidders may request a debriefing and if necessary, may submit a protest to the Director. Protests are heard in accordance with N.J.A.C. § 17:12-3.

**2 C.F.R. § 200.325 Federal awarding agency or pass-through entity review.**

It is difficult to compare each specific standard in this subsection with specific State policies; however, the State’s practice is equivalent to the intent of the standards set forth in this subsection as agencies must submit to DPP and DPMC a pre-approval package, including among other items, the specification, Federal supply schedule (if applicable), proposed vendor(s), and cost analysis. Prior to contract creation, DPP and DPMC will thoroughly review the package and conduct a pre-award review with the agencies to ensure that a level playing field and full and open competition were maintained. After the RFQ is posted, a question and answer period is conducted. The RFQ contains standard terms and conditions and BAFOs are requested from bidders determined to be in the competitive range. Depending on the dollar value of the procurement, a DPP or DPMC pricing analyst will also review the reasonableness of the pricing prior to award. After the intent to award is issued, unsuccessful bidders may request a debriefing and if necessary, may submit a protest to the Director. Protests are heard in accordance with N.J.A.C. § 17:12-3.

**2 C.F.R. § 200.326 Bonding requirements.**

If the service being procured requires bonding to protect the State’s interests, DPP or DPMC will include applicable bonding in accordance with the provisions of this subsection. Specifically, the Director of DPP has the discretion to do so under N.J.A.C. § 17:12-2.5.

**2 C.F.R. § 200.327 Contract provisions.**



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The general provisions enumerated in this subsection are included in the State's Standard Terms and Conditions. Section 2.10 of the State's Standard Terms and Conditions, which are applicable to all contracts entered into by the State, requires that "[t]he contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder." The Federal regulations are incorporated into contracts where they are applicable.