



This document is intended to help attorneys and procurement officials for private nonprofits understand the requirements for procurements under Federal grants set forth at 2 C.F.R. §§ 215.40-48. For more information regarding procurement, please visit www.FEMA.gov.

A. RECIPIENT RESPONSIBILITIES

Recipients are responsible for settlement and satisfaction of contractual and administrative issues, to include disputes, claims, protests of award source evaluation, and other matters of a contractual nature.

B. CODES OF CONDUCT

Recipients must maintain written standards of conduct governing the performance of agents engaged in award and administration of contracts. The standards must provide no employee, officer, or agent may participate that has financial or other interest in award; no employee, officer, or agent may accept/solicit gratuities from contractors or potential contractors; and for disciplinary action for violations.

C. COMPETITION

Open and free competition is required. Recipients must:

- Ensure that solicitations set forth all requirements
- Award to bidder or offeror whose bid or proposal is responsive to the solicitation and is most advantageous to the recipient, with price, quality and other factors considered
- Avoid organizational conflicts of interest and noncompetitive practices
- Exclude contractors that develop or draft specifications for invitations for bids (IFB) or requests for proposals (RFP) from responding to those IFBs or RFPs to ensure objective contractor performance and eliminate unfair competitive advantage.

D. PROCUREMENT PROCEDURES

1. Recipients must establish written procurement procedures that avoid purchasing unnecessary item; analyze lease and purchase alternatives to decide most economical approach where appropriate; solicit for goods and services using a clear and accurate description of the requirement; and clearly state the evaluation factors to be used in the solicitations. Evaluation factors include:

- A clear and accurate description of the technical requirements for the material, product or service to be procured
- Identification of requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals
- A description of technical requirements in terms of functions to be performed or performance required
- The specific features of “brand name or equal” descriptions
- The acceptance for products and services dimensioned in the metric system of measurement
- Preference for products and services that conserve natural resources and protect the environment and are energy efficient

2. Recipients must take affirmative steps to ensure that small businesses, minority-owned firms, and women’s business enterprises, are used to the fullest extent practicable, by:

- Publicizing opportunities and arranging time frames for purchases and contracts to encourage and facilitate participation by these entities



- Considering in the contract process whether firms competing for larger contracts intend to subcontract with such firms
- Encouraging subcontracting to such firms when a contract is too large for one of these firms to handle individually
- Using the services and assistance of the Small Business Administration and Department of Commerce's Minority Development Agency in the solicitation and use of these firms

3. Recipients must select the type of contracting methods to be used that promotes the best interest of the project involved. Recipients are prohibited from using the "cost-plus-percentage-of-cost" or "percentage-of-construction" methods.

4. Recipients must award to responsible contractors, with consideration given to contractor integrity, record of past performance, financial/technical resources, and history of debarment or suspension.

- 5. Recipients must make available pre-award review and procurement documents such as RFP/IFB, cost estimates, etc., when procurement:
 - Fails to comply with applicable federal procurement standards
- A proposed contract modification changes scope of a contract or increases contract amount by more than small purchase threshold
- A procurement is expected to exceed small purchase threshold and
 - Is to be awarded noncompetitively or only one bid is received
 - Specifies a "brand name" product
 - Award is to be made to other than apparent low bidder under a sealed bid procurement

E. COST AND PRICE ANALYSIS

Recipients must perform a cost/price analysis for every procurement. Cost analysis may include the comparison of price quotations submitted, market prices and similar indicia, together with discounts.

F. PROCUREMENT RECORDS

Recipients must maintain procurement records and files for purchases in excess of small purchase threshold, to include basis for contractor selection, justification for lack of competition when competitive bids are not obtained, and basis for award cost or price.

G. CONTRACT ADMINISTRATION

Recipients must maintain a contract administration system to ensure contractor conformance with contract terms and to ensure adequate and timely follow up of all purchases. Recipients must evaluate contractor performance and document whether contractors have met the terms, conditions, and specifications of the contract.

H. CONTRACT PROVISIONS

Contracts and subcontracts must also include:

- Remedies (in contracts in excess of the small purchase threshold)
- Termination of the contract both for default and convenience (in contracts in excess of the small purchase threshold)
- Bid guarantees, performance bonds, and payment bonds for construction/facility improvements not exceeding \$100,000.



- If construction/facility improvements exceed \$100,000, unless awarding agency determines that bonding requirements are adequate, minimum bonding requirements that include
 - Bid guarantee from bidder equivalent to 5 % of the bid price
 - Performance and payment bond from “Surety Companies Doing Business with the United States” for 100% of the contract price
- Audit access to records under the contract for the recipient or federal government (in contracts in excess of the small purchase threshold)
- Applicable procurement provisions of Pt. 215, appendix A for all contracts