

Taylor County, Iowa Procurement Division

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I. PURPOSE

Taylor County's Procurement Policies and Procedures are established to ensure the procurement of goods, supplies, equipment, construction and services are obtained in a manner that is most fiscally responsible and providing full, fair and open competition to eliminate unfair competitive advantages.

II. TERMINOLOGY

A. DEFINITIONS:

1. "County" means the governmental entity Taylor County, Iowa.
2. "Capital Assets" Tangible or intangible assets (goods) used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:
 - a. Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and
 - b. Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).
 - c. For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a period of time under a lease contract.
3. "Bond threshold" means contracts for the construction of a public improvement shall, when the contract price equals or exceeds twenty-five thousand dollars (\$25,000.00), be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of other requirements as provided by law. (Iowa Code §573.2).
4. "Competitive Bid threshold" means the estimated cost of a public improvement exceeds the threshold of one hundred thousand dollars (\$100,000.00). Iowa Code §26.3).
5. "Conflict of Interest" means the same as described in Iowa Code section 331.342. Generally, when an officer, employee, or agent, any member of his or her immediate family, his or her partner, or an organization which employees or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

6. "Contract" means a legal instrument by which a recipient or subrecipient purchases property or services.
7. "Contractor" means an entity that receives a contract as defined in this section.
8. "Formal Procurement Methods" means competitive procurements such as Requests For Proposals, Invitations For Bid, and Requests For Qualifications. Formal Procurement Methods are required when the value of the procurement for property or services exceeds the Simplified Acquisition Threshold (SAT) of \$49,999 for general goods and services and \$100,000 for Public Improvement. Formal Procurement Methods require public advertising.
9. "Informal Procurement Methods" means competitive procurements such as Micro-Purchases and Small Purchases. Informal Procurement Methods are used when the cost of property or services does not exceed the Simplified Acquisition Threshold of \$49,999 established by Taylor County (SAT).
10. "Micro-purchases" means the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the Micro-Purchase Threshold.
11. "Micro-purchase Threshold" means the dollar amount at or below which Taylor County may purchase property or services using micro-purchase procedures (See, 2 CFR §200.1; and 48 CFR part 2, subpart 2.1). (See also, Federal Acquisition Regulations (FAR)).
12. "Procurement," or "Purchase" means the acquisition of goods and services through lease, lease/purchase, acceptance of, contracting for, obtaining title o, use of, or any other manner of method for acquiring an interest in a good or service.
13. "Professional Services" means any type of professional service which may be legally performed pursuant to a certificate of license and any other type of contractual service, required by Taylor County but not furnished by its own employees, which is in its nature so unique that it should be acquired by negotiation on the basis of competence and qualification for the type of services required and for a fair and reasonable price rather than by competitive sealed bidding.
14. "Public Improvement" means the same as defined in Iowa Code section 26.2: a building or construction work which is constructed under the control of a governmental entity and for which either of the following applies: (1) Has been paid for in whole or part with funds of the governmental entity. (2) A commitment has been made prior to construction by the governmental entity to pay for the building or construction work in whole or in part with funds of the governmental entity. Public Improvement includes a building or improvement constructed or operated jointly with any other public or private agency. Public Improvement does not exclude urban renewal demolition and low-rent housing projects, industrial aid projects authorized under chapter 419 of the Code of Iowa, emergency work or repair or maintenance work performed by employees of a governmental entity, excluding a highway, bridge, or culvert project, and excluding construction or repair performed for a rural water district under chapter 357A by its employees. (See, section 26.2(3)(b) Code of Iowa 2023).
15. "Road or bridge construction threshold" means all contracts for road or bridge construction work and materials for which the engineer's estimate exceeds fifty thousand dollars

(\$50,000.00), except surfacing materials obtained from local pits or quarries, shall be advertised and let at a public letting. (Iowa Code §309.40).

16. "Simplified Acquisition Threshold" means cost of *property or services* exceeds the micro-purchase threshold (\$10,000) but does not exceed the Simplified Acquisition Threshold (SAT) of \$49,999.00 the threshold at or below which the county may purchase *property or services* using Small Purchase procedures which must not exceed the threshold established in the FAR.
17. "Small Purchases" means the acquisition of *property or services*, the aggregate dollar amount of which exceeds the micro-purchase threshold (\$10,000) but does not exceed the Simplified Acquisition Threshold (SAT) of \$49,999.

III. GENERAL PROCURMENT STANDARDS

A. PROCUREMENT DIVISION

1. The Taylor County Auditor's Office shall maintain and control the Procurement Division.
2. The Auditor's Office Procurement will use good administrative practices, its documented Procurement Procedures and sound business judgement to manage the County's procurement process and procedures; and provide oversight to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
3. From time to time the Procurement process may require draft suggested policies and procedures for Taylor County to consider for adoption and use.
4. The Auditor's Office will utilize the expertise of each office or department in developing specifications and evaluation methods. Depending on the goods and services being procured, each officer or department may have a more hands-on role in the procurement process; including serving on an evaluation committee.
5. The Auditor's Office will provide each county office and department, a guidance on the best practices through professional development each year.

B. STANDARDS OF CONDUCT

1. Conflicts of Interest (Personal)
 - a) An officer or employee of the county shall not have an interest, direct or indirect, in a contract with the county. (See, Iowa Code, §331.342)
 - b) No officer or employee may participate in the selection, award, or administration of a contract supported by a state or local governmental award if he or she has a real or apparent conflict of interest.
 - c) Officers, employees, and agents of the county may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
 - d) Officers, employees, and agents found to violate the Conflicts of Interest standard of conduct may be subject to disciplinary action up to an including termination.
2. The provisions contained in Iowa Code Section 331.342(2)(a) through (k) shall not apply to this section.

C. PRIORITIZATION

1. The County's internal operated sources of supply will be the primary source of supply for the County when goods or services are available from these internal sources. If the County's

internally operated and externally established contracted sources of supply cannot meet a particular need of an office or department, then goods or services may be procured from outside sources through the Auditor's Office.

2. In the event that a county office or department requires goods or services not currently available through the County's internally operated source of supply nor available from a current external contracted supplier, the office or department will request the Procurement Division assistance in conducting the appropriate procurement process.
3. Capital Goods will be purchased by or authorized for purchase by the Board of Supervisors according to the County's approved annual budget, procurement procedures and when authorized by Department Heads.

D. COOPERATIVE PURCHASING

1. To foster greater economy and efficiency Taylor County will encourage the use of Federal, State, and/or local intergovernmental or cooperative purchasing agreements for the procurement of goods or services.

E. UNECESSARY OR DUPLICATIVE

1. Taylor County will avoid acquisition of unnecessary or duplicative items.
2. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
3. When appropriate, an analysis should be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

F. CONSIDERATIONS

1. The county will award contracts only to responsive, responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
2. The county reserves the right to award Professional Service contracts which are in their nature so unique that it should be acquired by negotiation on the basis of competence and qualification for the type of services required and for a fair and reasonable price rather than by competitive sealed bidding.

G. RECORDS

1. The Auditor's Office will maintain records sufficient to detail the history of procurement. These records will include, but not limited to, the following: Rational for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

IV. PROCUREMENT PROCEDURES

A. County offices and departments will follow the procedures set for below to procure goods and services:

1. All procurement transactions for the acquisition of goods or services will be conducted in a manner providing full, fair and open competition.
2. Taylor County will avoid placing unreasonable requirements on solicitations for bidding that would unreasonably restrict competition.

3. When preparing requisition requests, offices and departments will provide a clear, accurate and complete description of the technical requirements for the goods, materials, product or services to be procured as possible to the Procurement Division. If goods or services are needed for a particular item, provide the model number, serial number, manufacturer, design and performance specifications, and any other information that may be useful to the Procurement Division.
4. The Procure Division will work cooperatively with the office or department in determining which Method of Procurement would be best suited for procuring the goods or services. The county will use the documented procurement procedures consistent with standards contained in section *V. Methods of Procurement* below.
5. Solicitations for procurement will incorporate a clear and accurate description of the technical requirements for the goods, materials, product, or service to be procured.
6. Taylor County in awarding a contract for the construction, repair, remodeling, or demolition of a public improvement will not use or include the prohibited terms and exemptions contained in section 73A.28 of the Code of Iowa (2023).
7. Under most circumstances, goods will be delivered to the Taylor County Courthouse or specifically to the Department receiving the product. Receiving personnel will note the date and time of delivery and discrepancies on between the goods ordered and goods delivered. If no discrepancies are noted, the goods will be delivered to the requisitioning entity. The authorized requisitioning entity will sign and date Receiving's copy of the requisition when the items are delivered. When delivery has been completed, Receiving's copy of the requisition will be filed with the original requisition. If discrepancies are found by the Receiving personnel, they will be noted on Receiving's copy of the requisition. The items will not be delivered until the discrepancies have been resolved. There may be occasions when items need to be delivered directly to the requisitioning entity therefore the delivery location and address will be stated on the purchase order or bid. All packing slips or invoices shall be inspected to insure they reference the purchase order number and/or name of requisitioning entity. If they do not, the person receipting for the items will contact the Procurement Division for verification.
8. The elected officer or department that originates a requisition for goods or services should initiate follow-up action if the goods or services have not been received in a reasonable time. This can be accomplished by contacting the Procurement Division and asking for a status report on a particular requisition. Maintaining a pending file or unfilled requisitions will greatly enhance the requisitioning entity's ability to monitor open requisitions.

V. METHODS OF PROCUREMENT

A. FORMAL PROCUREMENT METHODS (COMPETITIVE)

1. *Consortium* - A consortium is a competitive procurement involving more than one agency. Each agency in the consortium must agree on the specifications and work together with one lead agency to develop common specifications.
2. *Government to Government Cooperative Purchases* - The County may utilize a current contract issued by another governmental agency to make a purchase without further competition. The department may join a contract or agreement let by a purchasing consortium

when the department reasonably believes the contract, agreement, or order was awarded in a fair and competitive manner.

3. *Master Agreements* – Taylor County may enter into master agreements to purchase goods and services of general use for all county elected offices or departments. Generally, master agreements should not exceed three years. Master agreements may provide for optional renewals for an additional one-to-three-year term. However, a master agreement and any renewal should not exceed a term of six years without justification.
4. *Request for Proposal/Invitation for Bid (RFP/IFB - Formal Bid)* – Formal Procedure Methods shall be used for the purchase of any property or service costing \$50,000 or more (\$100,000 for Public Improvement projects). The RFP procurement process must be conducted by the Board of Supervisors for all goods and public improvement projects. RFPs may also be conducted for any project valued under \$50,000 when projects are general, specifications are less detailed, and/or knowledge of available products is inadequate. Respondents may have different features in their proposals that will be evaluated for best value. Respondents should only bid according to the exact specifications listed.
5. *Construction Procurement (RFP-Formal Bid)* – The formal procedure for all public improvement projects with a total cost of \$100,000 or more. RFPs may also be conducted for any project valued under \$100,000 when projects are general, specifications are less detailed, and/or knowledge of available products is inadequate. Respondents may have different features in their proposals that will be evaluated for best value. Respondents should only bid according to the exact specifications listed. RFP's will be posted via the County E-Procurement platform; BidNet Direct.
6. *Request for Qualifications (RFQ – Qualifications Based)* –The RFQ procedure is used when contracting for Architectural and Engineering services (A&E). Other types of Professional Services that may be procured using RFQ procedures include: Medical Doctors, Nurses, Attorneys, program management, construction management, preliminary engineering, design, surveying, mapping, and/or services that require performance of a registered or licensed architect. Award criteria will be based on competence, qualifications and geographic location before price considerations. Respondents must submit cost proposals on a separate document clearly marked "Cost Proposal" which will not be reviewed until after the qualifications have been scored. If the RFQ review committee concludes the cost proposal of initial selected vendor precludes an award to the most qualified vendor, the office maintains the right to negotiate a lower cost. If that negotiation does not yield the results the County desires, the County may move to the next most qualified vendor and review their pricing. RFQ's will be posted via the County E-Procurement platform. Taylor County reserves the right to direct source professional service providers without competitive bids or RFQ's when it is in the best interest of Taylor County and Taylor County citizens.

B. INFORMAL PROCUREMENT METHODS

1. *Micro-Purchase* – The acquisition of supplies or services, the aggregate dollar amount of which does not exceed, the micro-purchase threshold (See the definition of *micro-purchase* in section II. Terminology).
 - a) Micro-purchases may be awarded without soliciting competitive price or rate quotations if Taylor County considers the price to be reasonable based on research, experience, purchase history or other information and documents its files accordingly. Micro-

purchases can be made by the Procurement Division, elected offices or county departments without obtaining competitive sealed bids. These purchases should be made via current contracted Taylor County suppliers. If no current Taylor County suppliers exists for the specific good or service, the purchases should be equitably distributed amongst qualified suppliers in first Taylor County, second in Iowa if none are available in Taylor County, then US if no vendors are available in Taylor County nor Iowa. No purchases or projects can be split to be under the dollar threshold to avoid competition.

- b) Taylor County is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures.

- 2. *Small Purchase Procedure (informal quotes)* – Informal Procurement Methods may be used for small purchases of *property and services* including Professional Services, costing between \$10,000 and \$49,999. It is the estimated value of the total contract that determines the procedure to use. Preference will be given to companies that have offices and/or manufacturing facilities in first Taylor County then second in Iowa. To use the small purchase procedure, contact the Auditor to obtain competitive pricing from an adequate number of qualified sources (typically 3 or more, but two may be determined adequate if no other supplier is found to be available in the area). Typically, low price is the sole determining factor in a small purchase procurement, but other factors may be considered (i.e., lead time on deliveries and company location). Determining factors should be part of the quote instructions. Taylor County reserves the right to direct source Professional Service providers without competitive bids when it is in the best interest of Taylor County and Taylor County citizens. Departments may conduct small purchases on their own with Procurement Division approval.
- 3. *Architectural and Engineering Services* - Taylor County reserves the right to direct source professional service providers when it is in the best interest of Taylor County and Taylor County citizens. Non-competitive contracting for professional services must be approved and documented by the Procurement Supervisor.
- 4. *Professional Services* – Taylor County reserves the right to direct source Professional Service providers when it is in the best interest of Taylor County and Taylor County citizens.

C. NON-COMPETITIVE PROCURMENT METHODS

- 1. The acquisition of goods or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See section II. Terminology).
- 2. *Sole Source Procurement* - Sole source procurements are allowed ONLY when the award of a contract is infeasible through a competitive process by any one of the following conditions:
 - a. The item is only available from one source (determined by way of only receiving one qualified bid).
 - b. The procurement is of such a specialized nature or related to a specific geographical location that by virtue of experience, expertise, proximity, or ownership of intellectual property rights, only one vendor could most satisfactorily provide the good or service.
 - c. Applicable law requires, provides for, or permits use of a sole source procurement.
 - d. The federal government or other provider of funds for the procurement (other than Taylor County) has imposed clear and specific restrictions on the use of the funds in a way that restricts the procurement to only one vendor.

- e. The procurement is an information technology device or service that is systems software or an upgrade; or compatibility is the overriding consideration; or the procurement would prevent voidance or termination of a warranty, or the procurement would prevent or default under a contract or other obligations.
 - f. A current contracted Taylor County or state of Iowa vendor can meet all requirements and specifications of only the specific item or service being procured at a substantial cost savings.
3. *Emergency Procurements* - In an emergency situation, County employees may not have time to contact the Procurement Division to conduct a formal bid or obtain quotes for goods and/or services. Therefore, Taylor County staff should be empowered to make quick decisions. Emergency procurements emphasize the rare, short-lived nature of such a situation and should not be used often nor be utilized to circumvent fair and open competition. Justifiable reasons for an emergency procurement are:
- a. A situation in which an immediate or emergency need exists for an item or service because of events and circumstances not reasonably foreseeable;
 - b. The situation threatens the public health, safety, or welfare;
 - c. The situation dictates a need to protect the health, safety, or welfare of persons occupying or visiting a public property;
 - d. A situation requiring a department or office to act immediately to preserve critical services or programs.
- If a Taylor County employee makes an emergency purchase and is unable to notify or consult with the Procurement Division or their department representative tasked with approving purchases prior to making the purchase, the employee must notify the Procurement Division and/or their department purchasing representative of the emergency procurement (including an explanation of the circumstances generating the need for the emergency procurement) as soon as possible. All attempts should be made to purchase from existing contracted suppliers.
5. *Other Purchases* - A number of goods and services cannot be effectively purchased utilizing the procedures previously described in this manual. These would include but not limited to publications available from a sole source, periodicals, and membership dues in professional organizations, licensing fees, and conference registration fees. The elected office, department or authorized representative may negotiate directly with the source of these good and services. The vendor should be directed to have invoices sent directly to the Auditor's office. Any invoices received by the requestor should be delivered to the Auditor's Office. The department/office head or authorize representative should NOT pay for the item and then apply for reimbursement. All payments by the County will be made to the vendors only. If prepayment is required, the requestor should present the registration material to order forms to Central Accounting so that a warrant can be prepared to pay for the items or service. When the requestor is in doubt as to which procurement method should be followed in a particular instance, the requestor should contact the Procurement Supervisor for guidance.
6. *Purchase Order Requisitions* – Products will be paid by Purchase Order/Invoicing or the use of County issued credit cards.

VI. PREFERENCES

A. TAYLOR COUNTY – STATE OF IOWA – UNITED STATES OF AMERICA

1. Taylor County, Iowa will, to the greatest extent practical and in the best interest of the citizens of Taylor County, Iowa at Taylor County’s discretion. provide a preference for the purchase, acquisition or use of goods, services, products, or materials produced in, (or has main offices within) Taylor County, the State of Iowa and the United States of America, in that order, (including but not limited to iron, aluminum, steel, cement, and other manufactured products) The requirements of this section must be included in all subawards including all contracts and purchase orders.
2. If it is determined that this provision would cause a denial of funds from the United States government which would otherwise be available, or would be inconsistent with requirements of federal law, Taylor County may suspend this Preference only to the extent necessary to prevent the denial of such funds or to eliminate the inconsistency with federal requirements.

B. SMALL, MINORITY OWNED, SERVICE-DISABLED VETERAN-OWNED, FEMALE-OWNED BUSINESSES

1. Taylor County will make a good-faith effort to purchase goods and services supplied by small businesses, minority-owned, service-disabled veteran-owned, and female owned businesses when possible.

VII. BOND REQUIREMENTS

A. PUBLIC IMPROVEMENTS

1. Each bidder shall accompany its bid with a bid security as security that the successful bidder will enter into a contract for the work bid upon, in an amount acceptable to Taylor County in accordance with section 26.8 of the Code of Iowa (2023).
2. Each success bidder shall, after the award of a contract, provide a corporate surety bond for the faithful performance of the contract, in an amount equal to one hundred percent of the amount of the contract in accordance with section 26.8 of the Code of Iowa (2023).

VIII. FEDERAL AWARD PROCUREMENT GUIDELINES

A. GUIDANCE for procurement of property and services using federally awarded funds. (See, Attachment “A”).

1. 2 CFR §200.317 through §200.327
 - a) 1. In order to be eligible to receive federal awards Taylor County will follow 2 CFR §200.317-§200.327.

B. CONTRACT PROVISIONS

1. All Taylor County contracts, using federal award funding must contain the following provisions:
 - a) All contracts in excess of (SAT) 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 county including the manner by which the county will be affected and the basis of 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 Taylor County 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. Taylor County 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. Taylor County 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. Taylor County 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 Taylor County 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 contractor 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.

ATTACHMENT "A"

FEDERAL PROCUREMENT AND CONTRACTING GUIDANCE FOR SUBRECIPIENTS

CODE OF FEDERAL REGULATIONS 2 (CFR) PART 200, SECTIONS 200.317-200.327 AND 22.307 EXEMPTIONS

PURPOSE

The purpose of a procurement policy is to ensure that sound business judgement is utilized in all procurement transactions. That supplies, equipment, construction and services are obtained efficiently and economically, and in compliance with applicable federal and state law, and executive orders, and to ensure that all procurement transactions are conducted in a manner that provides full and open competition. These procedures will ensure that all solicitations incorporate clear and accurate descriptions of the technical requirements for the goods or services being procured. Chapter 26 and Section 331.341 of the Iowa Code must be followed on all applicable purchases. All other appropriate sections of the Iowa Code shall also apply.

FEDERAL PROCUREMENT STANDARDS

Subrecipients should use this guidance to review their current written procurement policies and procedures to ensure compliance with the federal requirements at 2 CFR, Sections 200.318-200.327. It applies to the procurement of all supplies, equipment, and construction and services that include any federal program funding. 2 CFR references are noted. All other appropriate sections of Iowa Code and Local Code shall also apply. **When federal requirements conflict with**

[§ 200.317 Procurements by 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. The State will comply with [§§ 200.321, 200.322, and 200.323](#) and ensure that every purchase order or other contract includes any clauses required by [§ 200.327](#). All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in [§§ 200.318 through 200.327](#)

[§ 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. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317 through 200.327](#).

(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.

(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. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors,

or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(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. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(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. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(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. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(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.

(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. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(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. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also [§ 200.214](#).

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(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. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must

set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[[85 FR 49543](#), Aug. 13, 2020, as amended at [86 FR 10440](#), Feb. 22, 2021]

[§ 200.319 Competition.](#)

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](#).

(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 procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(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, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the

material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or 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. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320\(c\)](#).

[§ 200.320 Methods of procurement to be followed.](#)

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](#), [200.318](#), and [200.319](#) for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in [§ 200.1](#), or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) **Micro-purchases -**

(i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in [§ 200.1](#)). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with [paragraphs \(a\)\(1\)\(iv\)](#) and [\(v\)](#) of this section.

(iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with [§ 200.334](#). The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in [§ 200.520](#) for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in [paragraph \(a\)\(1\)\(iv\)](#) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) **Small purchases -**

(i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with [§ 200.319](#) or [paragraph \(c\)](#) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

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

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see [paragraph \(a\)\(1\)](#) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

[§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.](#)

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in [paragraphs \(b\)\(1\)](#) through [\(5\)](#) of this section.

Search the Iowa Targeted Small Business Directory - <https://iowaeda.microsoftcrmpartals.com/tsb-search/>

Search Federal DBE Directory for minority and woman owned businesses

<https://secure.iowadot.gov/DBE/Directory/Results>

[§ 200.322 Domestic preferences for procurements.](#)

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

[§ 200.323 Procurement of recovered materials.](#)

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[§ 200.324 Contract cost and price.](#)

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under [subpart E of this part](#). The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

[§ 200.325 Federal awarding agency or pass-through entity review.](#)

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in [paragraph \(b\)](#) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

[§ 200.326 Bonding requirements.](#)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

[§ 200.327 Contract provisions.](#)

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

§ 22.807 Exemptions.

(a) Under the following exemptions, all or part of the requirements of E.O.11246 may be excluded from a contract subject to E.O.11246:

(1) *National security.* The agency head may determine that a contract is essential to the national security and that the award of the contract without complying with one or more of the requirements of this subpart is necessary to the national security. Upon making such a determination, the agency shall notify the Deputy Assistant Secretary in writing within 30 days.

(2) *Specific contracts.* The Deputy Assistant Secretary may exempt an agency from requiring the inclusion of one or more of the requirements of E.O.11246 in any contract if the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the Deputy Assistant Secretary finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of E.O.11246.

(b) The following exemptions apply even though a contract or subcontract contains the Equal Opportunity clause:

(1) *Transactions of \$10,000 or less.* The Equal Opportunity clause is required to be included in prime contracts and subcontracts by [22.802\(a\)](#). Individual prime contracts or subcontracts of \$10,000 or less are exempt from application of the Equal Opportunity clause, unless the aggregate value of all prime contracts or subcontracts awarded to a contractor in any 12-month period exceeds, or can reasonably be expected to exceed, \$10,000. (Note: Government bills of lading, regardless of amount, are not exempt.)

(2) *Work outside the United States.* Contracts are exempt from the requirements of E.O.11246 for work performed outside the United States by employees who were not recruited within the United States.

(3) *Contracts with State or local governments.* The requirements of E.O.11246 in any contract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the contract.

(4) *Work on or near Indian reservations.* It shall not be a violation of E.O.11246 for a contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, sexual orientation, gender identity, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with E.O.11246, rules and regulations of the Secretary of Labor, and applicable clauses in the contract.

(5) *Facilities not connected with contracts.* The Deputy Assistant Secretary may exempt from the requirements of E.O.11246 any of a contractor's facilities that the Deputy Assistant Secretary finds to be in all respects separate and distinct from activities of the contractor related to performing the contract, provided, that the Deputy Assistant Secretary also finds that the exemption will not interfere with, or impede the effectiveness of, E.O.11246.

(6) *Indefinite-quantity contracts.* With respect to indefinite-quantity contracts and subcontracts, the Equal Opportunity clause applies unless the contracting officer has reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The applicability of the Equal Opportunity clause shall be determined by the contracting officer at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the Equal Opportunity clause shall be applied to the contract whenever the amount of a single order exceeds \$10,000. Once the Equal

Opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration regardless of the amounts ordered, or reasonably expected to be ordered, in any year.

(7) *Contracts with religious entities.* Pursuant to E.O. 13279, Section 202 of E.O. 11246, shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in the order.

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the contracting officer shall submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of E.O. 11246. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section shall be submitted to the Deputy Assistant Secretary for approval.

(d) The Deputy Assistant Secretary may withdraw the exemption for a specific contract, or group of contracts, if the Deputy Assistant Secretary deems that such action is necessary and appropriate to achieve the purposes of E.O. 11246. Such withdrawal shall not apply-

(1) To contracts awarded before the withdrawal; or

(2) To any sealed bid contract (including restricted sealed bidding), unless the withdrawal is made more than 10 days before the bid opening date.

Parent topic: [Subpart 22.8 - Equal Employment Opportunity](#)