



This document is intended to help attorneys and procurement officials for local and tribal governments understand the requirements for procurements under Federal grants set forth at 44 C.F.R. § 13.36. For more information regarding procurement, please visit www.FEMA.gov.

A. PROCUREMENT STANDARDS

1. Maintain a contract administration system ensuring performance in accordance with contract terms.
2. Maintain written standards of conduct governing performance of agents engaged in award and administration of contracts. Must provide: (a) No agent may participate that has financial or other interest in award; (b) No agent may accept/solicit gratuities from contractors or potential contractors; and (c) Disciplinary action for violations.
3. Establish procedures to avoid purchase of unnecessary/duplicative items.
4. Analyze lease vs. purchase to decide most economical approach.
5. Award only to responsible contractors with ability to perform in consideration of: (a) Contractor integrity; (b) Compliance with public policy; (c) Past performance; and (d) Financial and technical resources.
6. Maintain records of procurement to include rationale for (a) Method of procurement; (b) Contract type; (c) Contractor selection, and (d) Contract price.
7. May use time and material contracts only (a) After determining no other contract is suitable, and (b) Contract includes ceiling price that contractor exceeds at its own risk.
8. Responsible for settlement of contractual and administrative issues, to include: (a) Source evaluation; (b) Protests; (c) Disputes, and (d) Claims.
9. Have protest procedures to resolve disputes relating to procurements and disclose information regarding protests.

B. COMPETITION

1. Full and open competition is required. Noncompetitive practices include: (a) Unreasonable qualifying requirements, including unnecessary experience/bonding; (b) Noncompetitive pricing practices between firms; (c) Noncompetitive awards to consultants on retainer contracts; (d) Organizational conflicts of interest; (e) Specifying "brand name" product, and; (f) Any arbitrary action.
2. Prohibit in-State or local geographical preferences, except as required by Federal law.
3. Have written source selection procedures for procurement transactions that include: (a) Complete description of the requirement; and (b) All factors to be used in evaluating bids.
4. May use prequalified lists of firms, but ensure: (a) List is current; (b) Has enough qualified sources for competition; and (c) Bidders are allowed to qualify during solicitation period.



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C. METHODS OF PROCUREMENT

1. **Small Purchase Procedures:** May use small purchase procedures for procurements under simplified acquisition threshold (SAT) (quotes from at least 3 sources).
2. **Procurement by Sealed Bids:** May procure through use of sealed bids, but only where contract is to be firm-fixed price. Shall: (a) Publicly solicit; (b) Solicit from adequate number of sources; (c) Provide sufficient time for solicitation and receipt of bids; (d) Ensure invitation for bids (IFB) defines requirement; (e) Publicly open bids at time and place prescribed; (f) Award firm fixed-price contract to lowest responsive, responsible bidder; and (h) Reject bids if in best interest to do so.
3. **Procurement by Competitive Proposals:** (a) Requests for proposals (RFP) shall be publicized; (b) RFPs shall identify all evaluation factors and their relative importance; (c) Responses shall be honored to the maximum extent practical; (d) Proposals shall be solicited from adequate number of sources; (e) Technical evaluations shall be conducted; and (f) Award made to firm whose proposal is most advantageous with price and other factors considered. **Exemption:** May use procedures for qualifications-based procurement of Architectural and Engineering (A/E) services where competitors' qualifications are evaluated and most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
4. **Noncompetitive Procurements:** Procurement through solicitation of a proposal from only one source or inadequate competition. May be used **only** when: (a) Full and open competition is infeasible, **and either** (i) *Item available only from single source;* **or** (ii) *Public exigency/emergency;* **or** (iii) *Awarding agency authorizes;* **or** (iv) *After solicitation of a number of sources, competition is determined inadequate;* **and** (b) cost analysis is performed to determine cost reasonableness.

D. SOCIOECONOMIC CONTRACTING

1. Take affirmative steps to assure small, minority, women-owned and labor surplus area firms are used: (a) Placing such firms on solicitation lists; (b) Soliciting such firms if they are potential sources; (c) Dividing requirements when possible; (d) Establish delivery schedules encouraging participation of such firms; (e) Using services of SBA, and the Minority Business Development Agency of the Department of Commerce; **and** (f) Requiring prime contractors to take these steps.

E. CONTRACT COST AND PRICE

1. Perform cost/price analysis for **every** procurement to include modifications: (a) Independent estimates before receiving bids/proposals; **and** (b) Cost analysis, if: (i) *Offerors are required to submit elements estimated cost;* **or** (ii) *Adequate price competition is lacking and sole source procurements unless price reasonableness can be established with commercial pricing data or based on prices set by law.*
2. Negotiate profit as separate element of price for each contract in which: (a) There is no price competition; and (b) Where cost analysis is performed.
3. To establish fair and reasonable profit consider: (a) Complexity of work; (b) Risk; (c) Contractor's investment; (d) Amount of subcontracting; (e) Quality of past performance; and (f) Industry profit rates in surrounding geographical area for similar work.



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4. Ensure costs/prices based on estimates are consistent with federal cost principles.
5. Shall not use cost plus a percentage of cost contract.

F. AWARDING AGENCY REVIEW

1. Make available technical specifications on proposed procurements.
2. Make available pre-award review procurement documents, such as RFP/IFB, cost estimates, etc. when procurement: (a) Fails to comply with applicable federal procurement standards; or (b) Is expected to exceed SAT and (i) *Is to be awarded noncompetitively or only one bid is received;* (ii) *Specifies a "brand name" product;* or (iii) *Award is to be made to other than apparent low bidder under a sealed bid procurement;* or (c) A proposed contract modification changes scope of a contract or increases contract amount by more than SAT.

G. BONDING REQUIREMENTS

1. Unless awarding agency determines bonding requirements are adequate, minimum bonding for construction contracts or subcontracts exceeding SAT shall be: (a) Bid guarantee equivalent to 5% of the bid price; and (b) Performance/Payment bonds for 100% of contract price.

H. CONTRACT PROVISIONS

1. Contracts and subcontracts must contain provisions on: (a) Remedies; (b) Termination for cause and convenience; (c) Equal Employment Opportunity (\$10K+); (d) Compliance with Copeland ("Anti-Kickback" Act for all construction or repair), Davis-Bacon Act (Construction, \$2K+), (f) Compliance with §§ 103 & 107 of Contract Work Hours and Safety Standards Act (construction, \$2K+; employment of mechanics/laborers, \$2,500+), Clean Air & Clean Water Act (\$100K+), and Energy Policy and Conservation Act; (g) Reporting; (h) patent rights with respect to any discovery or invention or is developed; (i) Copyrights & rights in Data; and (j) Access and Retention of records. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses.

