OCED Procurement Guidance

The Office of Clean Energy Demonstrations (OCED) allows recipients to acquire a variety of available goods or services in connection with their award. Procurement transactions occur when recipients or subrecipients purchase property or services needed to carry out the federally funded project. When used correctly, procuring goods or services can help an organization implement a successful project or program.

The Federal procurement standards, found at 2 CFR Part 200 Subpart D - Procurement Standards lay out the rules recipients or subrecipients must follow for the acquisition of property or services under a Federal award or subaward.

What are the Procurement Standards?

Under 2 CFR 200.317, States are required to follow their own state laws for procurements. State governments are also required to follow 2 CFR 200.322 and 2 CFR 200.326. All other non-Federal entities must follow the procurement requirements found at 2 CFR 200.318 through 2 CFR 200.327.

Recipients are required to keep records detailing the history of all procurements funded using OCED funds. The records must include, but are not limited to, the following:

- Rationale for the method of procurement
- Selection of contract type
- Contractor selection and/or rejection process
- Basis for the contract prices

What Important Information Should I Know?

General procurement requirements for recipients, other than states, are located in 2 CFR 200.318. The regulations require that procurement activities be performed in an equitable and competitive manner to promote equal treatment, efficiency, and economy in Federal grant activities. To ensure objective contractor performance and eliminate an unfair competitive advantage, contractors should be excluded from competing for such procurements if they develop or draft grant applications or contract specifications, requirements, statements of work, invitations for bids, and/or requests for proposals.

In addition, recipients should have an internal control or documented process to check for organizational conflict of interest with potential contractors. When creating policies and procedures, recipients should know that the Uniform Guidance sets strict requirements around procurement and guarding against conflicts of interest when purchasing goods and services under Federally funded grants and contracts. In addition, Federal regulations do not define family or partner. It is the responsibility of the recipient to set out in its procedures the circumstances that trigger a family or partner relationship. To ensure compliance and organization-wide understanding, recipients should consider holding employee trainings or require certifications from employees to demonstrate their knowledge of these relationships as it relates to conflicts of interest.

The guidance provided highlights areas of compliance typically required of recipients of Federal assistance awards. It is not intended to fully document all requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200 or 2 CFR Part 910. This guidance document does not supersede Federal laws and regulations. This OCED guidance document is for informational purposes only and is not a requirements document. If there are inconsistencies between this OCED guidance document and any specific program or project document, the specific OCED program or project document should be relied upon as it is the controlling document.

Recipients must have a process in place ensuring that contracts are not awarded to contractors or individuals excluded from participation in Federal programs. This is accomplished by performing reviews of potential contractors or individuals in the System for Award Management (SAM), a system that validates the legitimacy and eligibility of entities wishing to engage in Federal awards, by checking factors such as compliance with Federal regulations, financial stability, and tax status.

The recipient must have and use their own written procurement standards and policies. They also must maintain oversight to ensure that their contractors and subrecipients perform in accordance with the terms, conditions, and specifications of their contracts, purchase orders, or subawards. The recipient must have written standards of conduct that cover organizational conflicts of interest and governing the performance of employees engaged in the selection, award, and administration of contracts. Their procedures must avoid acquisition of unnecessary or duplicative items. Recipients must only award contracts to responsible contractors who can perform successfully.

The recipient is encouraged to enter into agreements with state and local governments or other entities for procurement or use of common or shared goods and services. They are also encouraged to use Federal excess and surplus property in place of purchasing new equipment and property, and to use value engineering clauses in contracts for construction projects that offer reasonable opportunities for cost reductions.

A recipient may only use a time and materials type contract after a determination that no other contract is suitable. If they do so, the contract must include a ceiling price that the contractor exceeds at its own risk.

Recipients 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. Recipients must provide full and open competition for all procurement transactions for the acquisition of property or services. Their written procurement procedures must ensure that all solicitations have a clear and acute description of the technical requirements for the item or service to be procured.

The recipient must take all steps to use minority businesses, women's business enterprises, and labor surplus area firms when possible. They also must provide a preference for purchasing goods and materials produced in the United States.

If the recipient is a state agency or agency of a political subdivision of a state, they and their contractors must comply with section 6002 of the Solid Waste Disposal Act. The recipient must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (SAT), including contract modifications.

The recipient must make available, upon OCED's request the technical specifications on proposed procurements to ensure that the item or service specified is the one being proposed for acquisition. For construction contracts, OCED may accept the recipient's bonding policy and requirements if they determine that the Federal interest is adequately protected.

All contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

What are the Methods of Procurement?

Recipients must follow the methods of procurement outlined in 2 CFR 200.320. "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 subaward." Below are methods of procurement and examples of each.

Informal

The recipient may use informal procurement methods to expedite the process and minimize burden when a procurement's value is under the Simplified Acquisition Threshold of $250,000. These include micro-purchases and small purchases.

Micro-Purchases are under the micro purchase threshold of $10,000 and 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.

Small Purchases procedures may be used for the acquisition of property or services for which the aggregate dollar amount is between the micro-purchase and simplified acquisition thresholds ($10,000 to $250,000). Small purchases require a price or rate quotation from an adequate number of qualified sources and no cost or price analysis is needed.

As of October 1, 2020, the FAR micro-purchase threshold is $10,000 and the simplified acquisition threshold is $250,000. The current FAR thresholds are available at https://www.acquisition.gov/browse/index/far.

Formal

Above the SAT, recipients must use one of the following formal procurement methods which require following documented procedures.

A **Sealed Bid** is 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.

During a competitive **Proposal** procurement, 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. The resulting contract is either a fixed price or cost-reimbursement type contract and must be awarded to the proposal which is most advantageous to the program, with price and other factors considered.

Noncompetitive procurement (formerly known as sole source) can only be awarded if one or more of the following specific circumstances apply:

- The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.
- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.
- The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity.
- The competition is determined inadequate, after solicitation of a number of sources.

How Does This Apply to Your Award?

Per 2 CFR 200.318(i), the recipient must have a sufficient procurement system that maintains records to detail the history of procurement. When a recipient determines that procurement of goods or services is necessary, there are steps that must be followed.

- **Conduct a cost or price analysis:** the recipient can gather preliminary cost data from a diverse range of sources, including vendor quotes, catalog and brochure prices, and trade publications.
- **Select the procurement method** (see options above): different procurement methods are appropriate for different goods or services and in different economic environments. Generally, sealed bid is the preferred method for construction procurements, assuming: an adequate specification or purchase description is available; at least two qualified bidders are willing and able to compete for the contract; and the procurement is suitable for a fixed-price contract and may be awarded principally based on price. The competitive proposal method of procurement is used primarily in situations where sealed bids are inappropriate (2 CFR 200.320(b)(2) provides details for non-Federal entities using this method).
- **Draft the bid solicitation:** bid solicitations must be designed to ensure that competition is not compromised, where applicable, and that bidders have all the information they need to submit a qualified bid. The solicitations should identify all evaluation criteria used to identify qualified bidders and the weight of those criteria in the ranking process.
- **Solicit bids:** for sealed bids and competitive proposals, solicitations must be publicized. In additional, when possible, recipients should use small and minority-owned business, women's business enterprises, and labor surplus area firms.
- **Evaluate proposals and select the successful bidder:** when evaluating potential bidders, recipients should consider the prospective contractor's integrity, record of past performance, and financial and technical resources. In addition, the recipient must determine whether the potential contractor has been debarred, suspended, or convicted of criminal violations under the Clean Air Act or other similar Federal statutes, in which case the contractor must be disqualified from consideration.
- **Negotiate the Contract**
- **Administer the contract:** 2 CFR 200.318 provides general procurement standards that all non-Federal entities must comply with.