The intent of this procedure is to develop guidelines when procuring goods and services, under Federal regulation 2 CFR 200, as of July 1, 2018.

All procurements with federal funds have 3 necessary cost aspects (2 CFR 200.403):
1. Reasonable: nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost
2. Allocable: It meets the guidance and eligibility of the federal grant award; and, the goods or services involved are chargeable or assignable to the Federal award
3. Allowable: The Federal award may be subject to statutory requirements that limit the allowability of costs

**Methods of Procurement (2 CFR 200.320)**

   - Applies to all goods/services for an aggregate total of up to $10,000, by vendor
   - No bid or quote is required if price to be considered fair and reasonable
     - Fair and reasonable can be determined by:
       - Comparing current prices to past purchases
       - Requesting prices from more than one vendor
   - Use available Cooperative contract, if applicable
   - Equitable distribution among a range of qualified vendors
   - Used to expedite low dollar value, small purchase transactions

2. **Small Purchase (2 CFR 200.320)**
   - Applies to all items/services $10,000 to $50,000
     - NOTE: $50,000 is FCPS threshold that must be followed – 2 CFR 200.320 states $10,000 to $250,000, however we must follow FCPS threshold of $50,000
   - Requires price or rate quotes from an adequate number of sources (at least three)
   - Quotes can be informal
   - Quotes must be documented and kept with the procurement
   - Equitable distribution among a range of qualified vendors
   - Use available Cooperative contract, if applicable

3. **Sealed Bids (2 CFR 200.320)**
   - Applies to all items/services from $50,000+
     - NOTE: $50,000 is FCPS threshold that must be followed – 2 CFR 200.320 states >$250,000, however we must follow FCPS threshold of $50,000
   - Use available Cooperative contract, if applicable
   - In order for sealed bids to be feasible, the following conditions should be present:
     - Complete, adequate, and realistic specification or purchase description
     - Two or more responsible bidders are willing and able to compete effectively
     - Procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made on the basis of price
   - Sealed bid requirements:
     - Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening of the bids, and must be publicly...
advertised.
  o 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
  o All bids will be opened at the time and place prescribed in the invitation for bids, and must be opened publicly
  o Firm fixed price contract award will be made to the lowest responsive and responsible bidder.
  • If bids are rejected, reasons must be documented
  • > $50,000 require a cost/price estimate prior to receiving bids

  • Applies to all items/services from $50,000+
    o NOTE: $50,000 is FCPS threshold that must be followed – 2 CFR 200.320 states >$250,000, however we must follow FCPS threshold of $50,000
  • Use available Cooperative contract, if applicable
  • Requires at least 2 competitive proposals
  • Competitive proposal requirements:
    o Requests for proposals must be publicized and identify all evaluation factors and their relative importance.
    o Responses to the request for proposal must be considered to the maximum extent possible
    o Proposals must be solicited from an adequate number of qualified sources
    o Must have a written method for conducting the technical evaluations of the proposals received and for selecting the recipients
    o Contracts must be awarded to the responsible firm whose proposal is the most advantageous to the program, with price and other factors considered
    o The method where price is not used as the selection factor, can only be used in A&E professional services contracts.
  • > $50,000 require a cost/price estimate prior to receiving bids

5. Non-Competitive Proposals (2 CFR 200.320)
  • Restrictive: procurement through solicitation of a proposal from only one source and must meet one of the below:
    o Item is only available from a single source
    o Emergency
    o After solicitation of a number of sources, competition is determined to be inadequate
  • Requires pre-approval
  • Requires detailed justification as to why there is only one source
  • Requires documentation on sources that were researched
  • Must prove that cost is fair and reasonable

General Procurement Standards (2 CFR 200.318)
1. Conflict of Interest (Operating Procedure Ethics OP005): 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 agent of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontractors.

2. Purchases of unnecessary or duplicative items must be avoided. Consolidate purchases when possible to obtain more economical purchases. When possible, conduct a lease vs purchase analysis to determine the most economical approach.
3. To promote cost-effective use of shared services, enter into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

4. Federal excess and surplus property is encouraged, in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs.

5. Value engineering clause is encouraged in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reduction. This 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.

6. Contracts must only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

7. Must maintain records sufficient to detail the history of procurement. These records are to include, but are not limited to: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the contract price.

8. Sound business judgement, and good administrative practices must be used in 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.

**Competition (2 CFR 200.319)**

1. All procurements must be conducted in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitation for bids or requests for proposal must be excluded from competing for such procurement. Situations considered to be restrictive of competition include, but are not limited to:
   - Placing unreasonable requirements on firms in order for them to qualify to do business;
   - Requiring unnecessary experience and excessive bonding;
   - Noncompetitive pricing practices between firms or between affiliated companies;
   - Noncompetitive contracts to consultants that are on retainer contracts;
   - Organizational conflicts of interest
   - Specifying only a “brand name” product instead of allowing “an equal” to be offered;
   - Any arbitrary action in the procurement process

2. Conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of ids or proposals, except in there is a Federal mandate encouraging geographical preference.
   In A&E contracts, geographical preference may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature an size of the project, to compete for the contract.

3. Must have written procedures for all procurement transactions. These procedures must ensure that all solicitations:
   - Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
     - Descriptions must not contain features which unduly restrict competition.
     - Descriptions 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 specs should be avoided when 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 requirements of the procurement.
   - Identify all requirements which the offerors must fulfill and all other factors to be used in
evaluating bids or proposals

- Ensure all prequalified lists of persons, firms, or products which are used in acquiring good and services are current and include enough qualified sources to ensure maximum competition. Potential bidders must not be precluded from qualifying during the solicitation period.

**Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms (2 CFR 200.321)**

1. Must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. Steps must include:
   - Placing qualified small and minority businesses on solicitation lists
   - Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources
   - 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
   - Establishing delivery schedule, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises
   - 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
     - Governor’s Office of Minority Affairs (GOMA)
     - Maryland Department of Transportation (MDOT)
     - Maryland Department of General Services (DGS)
     - Maryland Department of Budget and Management (DBM)
   - Requiring the prime contractor, if subcontractors are to be let, to take affirmative steps listed above

**Procurement of Recovered Materials (2 CFR 200.322)**

1. Must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. This includes:
   - Procuring only items with 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.

**Contract Cost and Price (2 CFR 200.323)**

1. Perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold ($50,000+), including contract modifications.
   - Must make an independent cost/price estimate before receiving bids or proposals
     - NOTE: $50,000 is FCPS threshold that must be followed – 2 CFR 200.320 states >$250,000, however we must follow FCPS threshold of $50,000

2. 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 the subcontracting
     - the quality of its record of past performance
     - industry profit rates in the surrounding geographical area.

**Federal Awarding Agency or Pass-Through Entity Review (2 CFR 200.324)**

1. Upon request, must make available technical specifications on proposed procurements, to ensure that the item or service specified is the one being proposed in the acquisition. This review would generally take place prior to the time the specification is incorporated into a solicitation document.

2. Upon request, must make available pre-procurement review, procurement documents such as
requests for proposals or invitations to bid, or independent cost estimates when:
- Procurement procedures or operation fails to comply with the procurement standards
- 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
- Procurement which is expected to exceed the Simplified Acquisition Threshold specifies a “brand name” product
- 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 proposal
- Proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold

3. Pre-procurement review is exempt if the Federal awarding agency or pass-through entity determines that the agency’s procurement system complies with the procurement standards

**Bonding Requirements (2 CFR 200.325)**
1. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold
   - A bid guarantee from each bidder equivalent to five percent of the bid price.
     - 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 contractual documents as may be required within the time specified.
   - A performance bond on the part of the contractor for 100 percent of the contract price.
     - Executed in connection with a contract to secure fulfillment of all the contractor’s obligations under the contract.
   - A payment bond on the part of the contractor for 100 percent of the contract price.
     - Executed in connections with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided in the contract.

**Contract Provisions (2 CFR 200.326)**
1. Contracts must contain the applicable provisions described in Appendix II to Part 200

**Internal Controls (2 CFR 200.303)**
1. Comply with statutes, regulations, and the terms and conditions of Federal Awards
2. Evaluate and monitor compliance
3. Take prompt action when instances of non-compliance are identified
4. Protect personally identifiable information and confidentiality
In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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 non-Federal entity including the manner by which it will be effected and the basis for settlement.


(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 non-Federal entities 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. The non-Federal entity 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. The non-Federal entity 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. The non-Federal entity 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 the non-Federal entity 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 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 non-Federal award 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.
