



UNITED STATES DEPARTMENT OF JUSTICE

# GUIDE TO PROCUREMENTS

Under DOJ Grants and Cooperative Agreements

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## Introduction

This document is intended for use by non-Federal entities (that is, recipients and subrecipients) of Federal financial assistance program funds administered by the Department of Justice (DOJ). As used throughout this guide, the term “non-Federal entity(ies)” includes for-profit entities.

This guide is based on the Procurement Standards set out at [2 C.F.R. Sections 200.317 through 200.327](#) and given regulatory effect by way of [2 C.F.R. Part 2800](#), *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards by the Department of Justice* (hereafter, the “Part 200 Uniform Requirements”). This document should be used in conjunction with the [DOJ Grants Financial Guide](#) as a tool to assist DOJ recipients and subrecipients in conducting procurements of property or services under DOJ grants or cooperative agreements that conform to the procurement standards and other applicable law.

# Chapter 1

## General Principles

This “Guide to Procurements under DOJ Grants and Cooperative Agreements” is intended to be used by States and other non-Federal entities.

States (including their agencies and instrumentalities thereof) must follow the same policies and procedures they use for procurements from their non-Federal funds. See [2 C.F.R. § 200.317](#). In addition, States must comply with the requirements set out at 2 C.F.R. § 200.323 for procurements of recovered materials and must ensure that procurement contracts funded with DOJ grant or cooperative agreement funds contain any clauses required by [2 C.F.R. § 200.327](#). All other non-Federal entities (including, for purposes of this guide, for-profit entities), including subrecipients of a State, must follow [2 C.F.R. § 200.318](#) through [§ 200.327](#).

All non-Federal entities should be aware that any disbursement of Federal program funds to another party may cast that party as either a subrecipient or a contractor. For guidance on subrecipient and contractor determinations, see [2 C.F.R. § 200.331](#). This guide deals with procurement (i.e. contracts) under grants and not with subawards to subrecipients. Under the Part 200 Uniform Requirements, a contractor is an entity that receives a contract, which is defined as a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award ([2 C.F.R. § 200.1](#)). A subaward in contrast is an award provided by a Non-Federal entity to a subrecipient so that the subrecipient can carry out a part of the Federal award ([2 C.F.R. § 200.1](#)). Whether the agreement is a subaward or a contract will be determined by the substance of the relationship, regardless of whether the parties consider the agreement to be a contract.

When conducting procurements under Federal grant and cooperative agreement awards, a Non-Federal entity must establish and maintain written procurement policies and procedures that reflect any applicable State, tribal, or local laws and regulations. These procurements must also conform to applicable Federal law, including the Part 200 Uniform Requirements.

Finally, those engaged in construction activities funded under federal grants and cooperative agreements should be aware that special rules may apply to their activities. See [2 C.F.R. § 200.326](#).



## Chapter 2

### Evolution of a Requirement

A grant or cooperative agreement application may incorporate the prospective non-Federal entity contracting parts of a project, such as when equipment or materials are required in order to carry out the project funded under the Federal award.

The preliminary decision to contract is based upon the prospective recipient’s best knowledge of the project requirements. Front-end logistical planning is necessary to conclude how best to meet the requirement. Dollar estimates for contracting efforts should be determined first, and then later included in the grant application.

The non-Federal entity should consider the most economical approach to the acquisition, including whether a procurement contract is the best option for meeting a project requirement.

Multiple options may be available, depending on the goods and services required. Each should be considered in light of the Part 200 Uniform Requirements’ emphasis upon greater economy, efficiency, and avoiding any duplication of effort. [. 2 C.F.R. § 200.318\(d\)](#).

No.	Question	Yes	No
1.	Is it more economical to lease the requirement rather than purchase it? If the answer is “Yes”, consider leasing rather than purchasing. See <a href="#">Chapter 18</a> “Other Considerations” of this guide.	<input type="checkbox"/>	<input type="checkbox"/>
2.	Is the requirement for common or shared goods or services? If the answer is “Yes”, consider using a State or local intergovernmental agreement, or an inter-entity agreement.	<input type="checkbox"/>	<input type="checkbox"/>
3.	Does the requirement allow for used equipment or property as opposed to new? If the answer is “Yes”, consider using Federal excess or surplus property.	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 3

### Acquisition Planning/Developing the Procurement Package

Detailed in-house planning is necessary in order to effectively award a contract. Who will be responsible for overseeing and interacting on different aspects of the contract should be determined in advance of any procurement. Therefore, there should be an agreement among personnel concerning details of any proposed contract well in advance of performance on the contract taking place.

If competitive sealed bidding is to be used, the contract is to be awarded on a fixed-price basis to the lowest responsible and responsive bidder. The procuring agency's invitation for bids should include a complete, clear, accurate, and realistic specification or purchase description (including any necessary design specifications).

If a negotiated procurement approach is to be used to obtain the goods or services, the solicitation's Statement of Work (SOW) should incorporate a clear and accurate description of the technical requirements. The request for proposals also must identify all evaluation factors and their relative importance.

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 instead. The solicitation must clearly state any specific features of any named brand that offerors must address in an offer in order to meet requirements under the procurement. [2 C.F.R. § 200.319\(d\)\(1\)](#).

The checklist below lists the types of documents that should be completely developed before the procurement action begins.

#### **Pre-Procurement Documentation Requirements:**

- ✓ Requisition.
- ✓ SOW (negotiated procurement) or Invitation for Bids (competitive, sealed bidding) (include design specifications, if applicable).
- ✓ Evaluation Criteria (negotiated procurement).
- ✓ Justification for noncompetitive procurement (sole source contracting). See [Chapter 10](#) - Procurement by Noncompetitive Proposals.
- ✓ All concurrences that may be required.

## Contracting Planning Procedures Checklist

No.	Question	Yes	No
1.	Are grant or cooperative agreement funds available to fund the proposed procurement?	<input type="checkbox"/>	<input type="checkbox"/>
2.	Has a market survey been conducted and documented to determine if there are contractors available to satisfy the requirement?	<input type="checkbox"/>	<input type="checkbox"/>
3.	Have divisions of labor been identified regarding contractual obligations for administrative, technical, and overall project responsibility?	<input type="checkbox"/>	<input type="checkbox"/>
4.	What type of procurement method has been chosen? Micro-purchases Small Purchases Competitive Sealed Bidding Competitive Proposal (Negotiated Procurement) Procurement by Noncompetitive Proposals	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
5.	Has the SOW been developed if required (or, the Invitation for Bids, if competitive sealed bidding is to be used)?	<input type="checkbox"/>	<input type="checkbox"/>
6.	If the contract is to be competitively negotiated, have Evaluation Criteria been developed?	<input type="checkbox"/>	<input type="checkbox"/>
7.	If the contract is to be negotiated on a sole source basis, has a Sole Source Justification been prepared? (See <a href="#">Chapter 10</a> )	<input type="checkbox"/>	<input type="checkbox"/>



## Chapter 4

### Methods of Procurement

Details on the following methods of procurement are found in the chapters indicated below:

- Shared Services and Other Agreements between Agencies (Entities) ([Chapter 6](#))
- Informal Procurement Methods
  - Small Purchases (Chapter 7) (See [2 C.F.R. § 200.320\(a\)\(1\)](#))
  - Micro Purchases (Chapter 7) (See [2 C.F.R. § 200.320\(a\)\(2\)](#))
- Formal Procurement Methods
  - Sealed Bids ([Chapter 8](#)) (See [2 C.F.R. § 200.320\(b\)\(1\)](#))
  - Proposals ([Chapter 9](#)) (See [2 C.F.R. § 200.320\(b\)\(2\)](#))
  - Noncompetitive Procurement ([Chapter 10](#)) (See [2 C.F.R. § 200.320\(c\)](#))

As mentioned earlier in [Chapter 2](#) (“Evolution of a Requirement”), multiple options may be available to obtain goods or services. As an example, if the product or service is available from another government agency or department, it may be appropriate to enter into a state, local, or tribal intergovernmental (or intra-governmental) or inter-entity agreement. Such agreements, under appropriate circumstances, may provide more economical, cost-effective, and efficient ways to obtain or use common or shared goods or services. If acquisition planning and research indicate that a procurement contract is the most cost-effective approach to meeting a particular requirement, then the procuring entity needs to apply its procurement procedures and policies – and the Procurement Standards in the Part 200 Uniform Requirements – to help identify the appropriate procurement method and its requirements.

For purchases below the Simplified Acquisition Threshold, procurement by micro-purchase or by small purchase procedures may be used.

Where the contract value costs more than the Simplified Acquisition threshold, the main types of procurement are procurement by competitive proposals and procurement by sealed bid (Competitive Sealed Bidding). The sealed bid method is the preferred method for procuring construction if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- More than one responsible bidder is willing and able to compete effectively, and
- The procurement lends itself to a firm fixed price contract and the selection of contractor can be made principally on the basis of price.

Procurement by competitive proposals is generally used when conditions are not appropriate for the use of sealed bids.

Noncompetitive procurement is used in limited circumstances, see [Chapter 10](#).

## Chapter 5

### Competition

***All procurement transactions must be conducted in a manner that provides for full and open competition, consistent with the procurement standards.<sup>1</sup>***

All non-Federal entities should have written procedures for procurement transactions. These procedures must ensure that all solicitations incorporate clear and accurate descriptions of the technical requirements for the goods or services being procured. This description should not, however, in competitive solicitations, unduly restrict competition.

In order to preserve full and open competition, contractors that develop or draft statements of work, requirements, specifications, or invitations for bids or requests for proposals must be excluded from competing for those procurements. Further, undue restrictions on full and open competition must be avoided, such as:

- Making unreasonable requirements in order to qualify for competition;
- Requiring unnecessary experience or excessive bonding;
- Engaging in noncompetitive practices between firms or in noncompetitive contracts with consultants on retainer;
- Organizational conflicts of interest;
- Specifying a “brand name” product without provision for an equivalent product to be offered (and without performance requirements or features being clearly described in procurement documents), or
- Any arbitrary action in the procurement process.

The SOW (or Invitation for Bids) itself should encourage such full and open competition. Bidders’ lists or market surveys can be used to help determine whether there will be a sufficient number of prospective offerors or bidders for a full and open competition to take place. If a bidders list is not considered adequate with respect to a requirement, a market survey of the marketplace should be conducted. Advertising the requirements in local newspapers and trade publications is one way to achieve a more effective, full and open competition.

Recommendations and prohibitions regarding how to make these competitions as full and open as possible are examined in detail at [2 CFR § 200.319](#).

Some organizations choose to maintain a prequalified bidders list, i.e., a list of prospective bidders who are prequalified as to material, equipment, or services. However, if not administered properly, this prequalification may run counter to the goal of full and open competition. Accordingly, prequalified bidders lists may be used only if they are current and include enough qualified sources to ensure adequate competition. If a pattern of “no response” is indicated for one or more bidders, organizations should consider whether removal of such bidder(s) from a bidders list may be justifiable and appropriate. Also, maintaining these lists by functional category may make them easier to use and maintain. If bidders’ lists are used, prospective bidders must not be precluded from becoming qualified during the solicitation period.<sup>2</sup>

Local preference laws/ordinances have always required special attention by the grantor agency when there are Federal dollars involved. Therefore, 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 where expressly encouraged by applicable Federal law.<sup>3</sup>

### Competition Checklist

No.	Question	Yes	No
1.	Does the SOW (or Invitation for Bids) contain attributes conducive to a full and open competition?  If the answer is “No,” the restrictive parts should be rewritten.	<input type="checkbox"/>	<input type="checkbox"/>
2.	Has the bidders list or a market survey been reviewed to determine availability of competitive contractors?  If the answer is “No,” a review should be done to determine the availability of competitive contractors in the market place.	<input type="checkbox"/>	<input type="checkbox"/>
3.	Has an “advertising” strategy been developed to allow prospective bidders ample time to request a copy of the invitation for bids and respond accordingly?  If the answer is “No,” ample time for advertising should be factored in, when determining the forecasted award date.	<input type="checkbox"/>	<input type="checkbox"/>

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<sup>2</sup> [2 C.F.R. § 200.319\(e\)](#).

<sup>3</sup> [2 C.F.R. § 200.319\(c\)](#).

## Chapter 6

### Shared Services and Other Agreements between Agencies (Entities)

*(May normally apply to state, tribal, or local governments)*

In certain instances, one way to satisfy a requirement is to meet the requirement through the transfer of funds from one unit of an organization to another, or through an agreement between or among governments (or entities) to share – or use common – goods or services. These approaches may help foster greater efficiency and economy. See [2 C.F.R. § 200.318\(e\)](#). Such approaches to obtain goods or services may be possible where, for example:

- Another part of the government (or organization) has the in-house capability or has a contract vehicle already in place that may be available to satisfy the requirement; or
- Another State, tribal, or local government has an existing contractor currently performing an activity, such as supplying a good or service, and that contractor would be capable (and available consistent with any applicable rules and contract terms) of satisfying the requirement; or
- Two or more neighboring jurisdictions may enter into an agreement (and may transfer or pool funds or share infrastructure) to share certain services or resources and take advantage of economies of scale.

The use of shared or common services arrangements or other agreements between or among agencies may offer certain advantages. For example, valuable procurement lead-time (or costs) may be saved. In addition, the preparation of a SOW, as well as the requirements for invitations for bids or requests for proposals, may become unnecessary under certain circumstances.

#### Shared Services/Other Agreements Checklist

No.	Question	Yes	No
1.	<p>Is there already a contractor under contract elsewhere within your jurisdiction (such as with another agency or department), or with another jurisdiction, that may be capable of and available to provide goods or services that may satisfy your agency's requirement?</p> <p>If the answer is "Yes," use of an existing contract with the contractor may be considered, assuming that any applicable rules and the existing contract's terms would allow your agency to use it to meet your requirement.</p>	<input type="checkbox"/>	<input type="checkbox"/>

No.	Question	Yes	No
2.	<p data-bbox="386 289 1177 394">Is there an opportunity to share or use common goods or services with a neighboring jurisdiction or organization to meet your agency's needs?</p> <p data-bbox="386 436 1177 541">If the answer is "Yes", an intergovernmental (or intra-governmental) or inter-entity agreement may be explored in order to help satisfy your agency's requirement.</p>	<input data-bbox="1226 321 1258 363" type="checkbox"/>	<input data-bbox="1323 321 1356 363" type="checkbox"/>

## Chapter 7

### Small Purchases (and Micro-Purchases)

***Small purchases involve the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold (\$10,000) but does not exceed the Simplified Acquisition Threshold [(currently set at \$250,000)].<sup>4</sup>***

***Micro-purchases involve the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (currently set at \$10,000).<sup>5</sup>***

This method is an important part of the logistics support function. Simplified procedures to cut down procurement lead time for day-to-day support items should be used. Simplified procedures may include the following:

1. **Telephone or Electronic Solicitations (normally for local vendors).** Price quotes are received by telephone or electronically. Where the purchase is anticipated to exceed the micro-purchase threshold, at least three (3) vendors should be solicited and price, availability, delivery, etc., should be requested. The purchase order is then awarded to the vendor quoting the lowest price, including consideration of all other factors. Supporting documentation must be maintained in the purchase order file and include the date contacted, vendors contacted, and quoted amounts and quantities.

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***TIP: Non-Federal entities must follow their own dollar threshold policy limitations if they do not exceed Federal thresholds.***

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<sup>4</sup> [2 C.F.R. § 200.320\(a\)\(2\)](#). The Simplified Acquisition Threshold is set by the Federal Acquisition Regulation (FAR). It is periodically adjusted for inflation in accordance with 41 U.S.C. § 1908. See [2 C.F.R. § 200.1 \(Definition of “Simplified acquisition threshold”\)](#). Consistent with the provisions in Part 200 DOJ will allow recipients (and any subrecipients) to use a simplified acquisition threshold of \$250,000, for federal grants administrative purposes.

<sup>5</sup> [2 C.F.R. § 200.320\(a\)\(1\)](#). The Part 200 Uniform Requirements defines “Micro-purchase” at [2 C.F.R. § 200.1](#). The Micro-purchase threshold is set by the FAR. Consistent with the provisions in Part 200 DOJ will allow recipients (and any subrecipients) to use a micro-purchase threshold of \$10,000, for federal grants administrative purposes.



2. **Unadvertised Written Quotations.** This procedure applies to more complex low dollar items when a quote in writing is desirable. Purchase Order Award is made to the vendor quoting the lowest price and meeting the technical requirements. Where the purchase is anticipated to exceed the micro-purchase threshold, quotations should be sought from at least three (3) vendors. Supporting documentation must be maintained that is similar to that for telephone solicitations.
3. **Blanket Purchase Agreements and Credit Cards.** Blanket Purchase Agreements (BPAs) may be described as a “Charge Account” that a procuring entity with frequent recurring requirements establishes with qualified sources of supply. Depending upon threshold limits established under non-Federal entity procurement rules, purchase cards (or, credit cards) may sometimes be used for these transactions. Non-Federal entities should have documented procedures that include control limits, authorized users and approving officials. Orders are placed against the BPA and the agreed-to-discount is included on the resulting invoice. Normally, billings are made by the vendor on a monthly basis. Caution should be taken to ensure discipline in assigning authority to purchase, including through the use of purchase cards. Orders should be placed to satisfy only legitimate requirements.
4. **Imprest Fund (Petty Cash Fund).** Paying cash for small dollar purchases is a viable way to accommodate small dollar requirements. There is only one overriding prerequisite for successful operation of the fund: Strict Dollar Accountability. Only designated personnel should be given safe access and combination numbers. Any change in designated personnel should require a change in the safe combination. Cash advances may be made and reconciled with a paid invoice at the completion of the purchase. Documented policy and procedures are needed including approving officials and periodic audits of the fund.

Micro-purchases (defined at [2 C.F.R. § 200.1](#)) may be awarded without soliciting competitive 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. To the extent practicable, micro-purchases should be distributed equitably among qualified suppliers.

When seeking to use either small purchase or micro-purchase methods, procuring agencies must avoid the intentional “splitting” of purchases or transactions to circumvent the dollar threshold limitations. Periodic internal review of buying patterns that focuses on repetitive transactions would be a good approach to address this potential issue. A repetitive buying pattern for a good or service without auditable evidence of a strong business case or programmatic reason to support the awarding of multiple contracts under small- or micro-purchase thresholds at frequent intervals may indicate that inappropriate purchase splitting has occurred.

## Small Purchases Checklist

No.	Question	Yes	No
1.	<p>Is the estimated cost of the requirement at or below the established simplified acquisition threshold?</p> <p>If the answer is “Yes,” a purchase order may be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Are there available local vendors that may logistically satisfy the requirement?</p> <p>If the answer is “No,” consider additional lead-time required to solicit vendors outside the local area.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>May the requirement be satisfied by an existing “Blanket” purchase agreement?</p> <p>If the answer is “Yes,” use the existing Blanket Purchase Agreement.</p> <p>If the answer is “No,” conduct a solicitation in accordance with Non-Federal entity procedures.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>Has the requirement been “split” to be below the mandatory purchase agreement monetary level? (Order splitting, an unallowable practice, is reducing an order below the small purchase threshold to avoid a more complex procurement method.)</p> <p>If the answer is “Yes,” another method must be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 8

### Sealed Bids

***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.<sup>6</sup>***

The Sealed Bid method is the preferred method for procurement and is properly used when the following conditions exist:

1. The requirement can be described and is finite and specific in detail, i.e., no unknowns or no contingencies. The contract will be awarded to the
  - a. **lowest** (fixed price) (where specified in bidding documents certain factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest),
  - b. **responsive** (the bid meets all the requirements of the invitation for bids, including design specifications), **and**
  - c. **responsible bidder** (the contractor has the capability in all respects, including technical and financial).
2. There are two or more contractors that could satisfy the requirement and are willing and able to compete for the contract.
3. There is enough time available to issue the invitation for bids, conduct a public bid opening, and award a firm fixed-price contract to the lowest responsive and responsible bidder.

If sealed bids are used, bids must be solicited to an adequate number of known suppliers, providing them with a sufficient amount of time to respond. Under the sealed bidding method of procurement, it is not necessary to conduct discussions with bidders in order to obtain the greatest value for the procuring agency, as the award is to be made to the lowest responsive and responsible bidder. For local and tribal governments, the invitation for bids must be publicly advertised.

However, if a procurement could be of the type that it may need to involve negotiation with vendors or discussions in order for the procuring agency to obtain the best value based on the requirement, it may be the case that competitive sealed bidding is not the right approach and the competitive proposals procurement method should be used instead.

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<sup>6</sup> [2 C.F.R. § 200.320\(b\)\(1\)](#).

## Sealed Bid Checklist

No.	Question	Yes	No
1.	<p>Is it possible to describe the requirement in exact terms (e.g., design specifications) so the contractor can make a fixed price bid?</p> <p>(Note: If a contractor must provide a deliverable for a fixed price where “unknowns” are involved, contingency dollars usually are included in the price. Then, if these contingencies do not generate or occur, the material/service may be overpriced.)</p> <p>If the answer is “Yes,” an Invitation for Bid (IFB) may be effectively used and the award can be made to the lowest bidder that is responsive and responsible.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Can it be expected that “advertising” will result in two or more responses to the solicitation?</p> <p>If the answer is “Yes,” consider use of an IFB.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 9

### Proposals

***Procurement by proposal. 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.<sup>7</sup>***

Procedures involve the following:

1. Develop a Statement of Work (SOW) listing essential requirements to accomplish the contract. For instance, in the case of a desired service, the SOW should spell out the particular problem to be solved including any essential requirement, without needlessly mandating the approach the contractor must take unless required by law. The SOW should be written in a straightforward manner, and, as a minimum, should contain the following:
  - a. Background providing necessary introductory information or evolution of the requirement.
  - b. Objectives/scope of work detailing broad parameters that are essential to effectively satisfy the requirement. (Note: Do not needlessly mandate how the contractor should satisfy the objectives of the contract. Performance measures must be used to ensure the quality of the outputs/outcomes.)
  - c. A list of tasks with accompanying deliverables, organized in a logical sequence.
  - d. A delivery schedule in increments as required to satisfy the requirement. The schedule may include performance bonuses for early completion and penalties for late delivery.
  - e. Acceptance and approval procedures should be indicated.
  - f. Other coverage as may be required:
    - i. References, licensing, and professional certifications.
    - ii. Non-Federal entity furnished items.
    - iii. Packing and shipping.
    - iv. Any other points that require coverage.
2. Develop the Request for Proposals (RFP) to identify all evaluation factors and their relative importance.

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<sup>7</sup> [2 C.F.R. § 200.320\(b\)\(2\).](#)

3. The RFP normally will contain the following:
  - a. Letter of Transmittal (or local standard form) providing certain relevant details concerning the requirement.
  - b. A delivery schedule to be included in the definitive contract, including all necessary administrative details.
  - c. The SOW (see no. 1 on the previous page).
  - d. Required special and mandatory clauses (Reference: Contract Provisions, [Chapter 11](#)).
  - e. Any special instructions to offerors to assist in developing the offer.
  - f. A listing of evaluation criteria to be used by the non-Federal entity in the evaluation of the offers received. Percentage weights may be assessed each criterion or the order of importance of each indicated criterion may be shown.
  - g. Any other information that may be required for the offerors to completely understand the contents and intent of the Request for Proposals.
  - h. A due date and time frame for receipt of all proposals.

4. The RFP must be solicited to an adequate number of qualified sources. Any timely response to the RFP must be considered to the maximum extent practicable.

5. Evaluation of the proposals received must be accomplished in accordance with written Non-Federal entity procedures. Each proposal must be scored based upon the evaluation criteria contained in the RFP. Evaluation criteria must not be changed after receipt of offers.

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*TIP: Clauses for bonuses for early completion and penalties for late delivery may be developed if they are in the public interest. Clauses may be added to the contract to cover these points. Also a prior approval key-personnel clause may be needed for personal services to ensure that qualified individuals are employed.*

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6. Contracts must be awarded to the responsible offeror whose proposal is the most advantageous to the non-Federal entity, with price and any other evaluation criteria considered.
7. When a procurement involves conducting negotiations, negotiations must be conducted with those offerors submitting the most promising proposals (those most highly rated in terms of technical factors and other evaluation criteria) in accordance with the determination of a procurement official (e.g., a contracting officer) designated by the non-Federal entity for that purpose. Issues (unforeseen requirements) raised during the negotiation phase by one respondent may be communicated to all remaining offerors, so that all may respond to the issue during the best and final phase of the negotiations.



## Proposals Checklist

No.	Question	Yes	No
1.	<p>Is it necessary to resolve technical questions/unknowns by negotiations with the successful contractor?</p> <p>If the answer is "Yes," this requirement is a candidate for the competitive proposal process.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Is it necessary to develop a Statement of Work, instead of a Design Specification spelling out specifically what is needed?</p> <p>If the answer is "Yes," proposals should be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 10

### Noncompetitive Procurement (Sole Source Contracting)

*Noncompetitive procurement may be used only under specified circumstances.<sup>8</sup>*

As indicated in [Chapter 5](#) (“Competition”), non-Federal entities must provide for full and open competition, consistent with the procurement standards. However, there are certain circumstances that may call for other than full and open competition. These circumstances may result in “sole source” contracting.

The Part 200 Uniform Requirements is quite clear regarding the necessity to have full and open competition to satisfy non-Federal entity procurement requirements. Procurement through the solicitation of a proposal from only one source may be used **only 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.
2. The item or service is available only from a single source (see page 23 for the format to be submitted to DOJ awarding agency or pass-through entity for approval).
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 noncompetitive procurement in response to a written request from the non-Federal entity.
5. After solicitation of a number of sources, competition is determined inadequate.

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*TIP: Prior written approval is required for all proposed sole source contracts over the Simplified Acquisition Threshold (currently \$250,000).*

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In any event, documentation reflecting actions taken and the position of the non-Federal entity is extremely important in order to establish an audit trail.

The following page contains a sample format for requesting prior approval from the DOJ awarding agency or pass-through entity to contract sole source.

<sup>8</sup> [2 C.F.R. § 200.320\(c\).](#)

# Justification for Noncompetitive Procurement

## Sample Format

Paragraph	Content
1	A brief description of the program and the product or service being procured, to include the expected procurement amount.
2	<p>Explanation of why it is necessary to contract non-competitively that provides a justification based on at least one of the circumstances set forth in numbers 2-5 in this chapter (also see <a href="#">2 C.F.R. § 200.320(c)</a>). This explanation must demonstrate how the proposed contractor's unique qualifications or the nature of the procurement necessitate the use of a noncompetitive approach given the circumstance(s) cited.</p> <ul style="list-style-type: none"><li>• If the product or service to be procured is available from only a single source or from only one supplier with unique capabilities, the justification should clearly demonstrate why this is so and how these circumstances are relevant given the nature of the acquisition.</li><li>• A justification based on public exigency or emergency should explain the nature of the public exigency or emergency, including why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan does not justify noncompetitive procurement based on public exigency or emergency.)</li><li>• If competition among multiple sources was determined to be inadequate, the justification should provide a detailed summary of any prior solicitations (including the number of sources solicited) and explain why competition was determined inadequate.</li></ul>

Paragraph	Content
3	A description of and the results of any market survey or research conducted to help determine whether a full and open competition consistent with applicable law could be conducted (or, if no market survey or research was conducted, explain why not).
4	Statement of when contractual coverage is required and, if dates are not met, what impact it will have on the program (for example, how long it would take another contractor to reach the same level of competence). Make sure to include the financial impact in dollars.
5	Description of and the results of any organizational conflict of interest review conducted (or, if no organizational conflict of interest review was conducted, explain why not.).
6	Any other points necessary for the justification.
7	Determination that the proposed noncompetitive procurement action is in the best interest of the DOJ awarding agency (or pass-through entity, as applicable).

# Chapter 11

## Contract Provisions

The Part 200 Uniform Requirements require that non-Federal entities' contracts contain the applicable provisions described in Appendix II to Part 200 — "[Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.](#)"<sup>9</sup> Non-Federal entities may develop language suited to accommodate a specific contractual situation, providing such clauses are consistent with the procurement standards and other applicable law. Non-Federal entities should be aware that they bear full responsibility for the settlement of all contractual and administrative issues arising out of their procurements, and that 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 proper authority in the applicable jurisdiction.<sup>10</sup> A discussion of a few of these provisions is set forth below:

1. Contracts in excess of the simplified acquisition threshold (currently set at \$250,000) must address administrative, contractual, or legal remedies in instances where the contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.  
*Reference: [Part 200 Appendix II\(A\)](#).*
2. **Termination.** Any contract over \$10,000 must address termination for cause and termination for convenience by the non-Federal entity, including the manner by which it will be affected and the basis for settlement.
  - a. **Termination for Convenience.** Contract is terminated due to reasons known to the non-Federal entity, i.e., program changes, changes in state-of-the-art equipment or technology, insufficient funding, etc. This type of termination is utilized when the contractor is not in violation of the contract terms and conditions.
  - b. **Termination for Cause.** Contract is terminated due to actions by the contractor, i.e., failure to perform, financial difficulty, slipped schedules, etc. In certain instances, termination settlement may include reprocurement costs to be paid by the contractor.

Termination settlements shall be accommodated by negotiations carefully planned in order to achieve an equitable resolution.

*Reference: [Part 200 Appendix II\(B\)](#).*

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<sup>9</sup> [2 C.F.R. § 200.327](#).

<sup>10</sup> [2 C.F.R. § 200.318\(k\)](#).



3. **Construction.** Contracts awarded for construction (generally DOJ grants do not allow construction) have special requirements and clauses. Refer to the DOJ Grants Financial Guide in the procurement chapter for specifications. If you have a DOJ grant allowing construction costs, please read the associated solicitation, award documents, and special conditions carefully. Regular contact with your program manager is very important. Construction contracts must include all relevant clauses found in Appendix II to Part 200, including Part 200 Appendix II(C) (Equal Employment Opportunity), (D) (Davis-Bacon Act), and (E) (Contract Work Hours and Safety Standards).
4. **Rights to Inventions Made Under a Contract or Agreement.** Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. This clause should require the contractor to disclose promptly inventions to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and [Title 37 C.F.R. § 401](#).

If the Federal award meets the definition of "funding agreement" under 37 C.F.R. §.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 [Title 37 C.F.R. § 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.

*Reference: [Part 200 Appendix II\(F\)](#).*

DOJ award terms and conditions contained in grant or cooperative agreement award documentation also may contain provisions regarding patents and intellectual property, specifically including requirements or special instructions, that may require that non-Federal entities include specific contract provisions (as applicable) in procurement contracts entered into under DOJ grant or cooperative agreement awards.

5. **Debarment and Suspension.** A contract award meeting the definition in [2 C.F.R. § 180.220](#) must not be made to parties listed on the System for Award Management (SAM) Exclusion lists. The debarment and suspension certification requires that agencies establish and implement procedures to ensure that Federal assistance is not awarded to entities that are prohibited from receiving Federal funds. Those procedures should include a review of information in SAM regarding exclusion status. (See OMB guidance at [2 C.F.R. § 180](#) implementing Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235 and DOJ regulations at 2 CFR Part 2867 adopting and supplementing subparts A through I of 2 CFR Part 180), "Debarment and Suspension.").

*Reference: [Part 200 Appendix II\(H\)](#).*

6. **Clean Air and Water.** Contracts (and subrecipients) exceeding \$150,000.00, must contain a provision requiring the contractor (or subrecipients) to agree to comply with all requirements of the Clean Air Act ([42 U.S.C. 7401 et seq.](#)), and the Clean Water Act [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).

*Reference: [Part 200 Appendix II\(G\)](#).*

7. **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.

*Reference: [Part 200 Appendix II\(I\)](#).*

8. **Procurement of recovered materials.** A non-Federal entity that is a state agency or agency of a political subdivision of a state must include a provision requiring contractors to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Per Section 6002, 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, these non-Federal entities and their contractors must procure only items, designated in guidelines of the EPA at [40 C.F.R. § 247](#), containing the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. These non-Federal entities and their contractors must procure solid waste management services so that energy and resource recovery are maximized, and they must establish an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

*Reference: [Part 200 Appendix II\(J\)](#), [2 C.F.R. § 200.323](#).*

## 9. New Regulatory Requirements and Considerations

- Non-Federal entities should be aware of a new provision in the regulations, [2 C.F.R. §200.322](#) “Domestic preferences for procurements” which requires the non-Federal entity to “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 the award.

- Another new regulatory provision, Part 183 “Never Contract With The Enemy”, prohibits grants, cooperative agreements, and procurements with individuals or entities considered to be enemies of the United States, within a narrow set of parameters. Under [2 C.F.R. §183.10](#) the value of the award must exceed \$50,000, the proposed work is to be performed outside of the United States and its territories, and will support a contingency operation in which U.S. Armed Forces are actively engaged, as defined under [2 C.F.R. § 183.35](#). Non-Federal entities should consult their respective Federal awarding agency if they believe that a potential award may meet this criteria.

## Chapter 12

### Contract Type Selection

*The following is a list of various contract types. Contract Type can refer both to the overall structure of a contract (e.g. task or delivery order) and the pricing structure of a contract (fixed price vs. cost reimbursement). Determining which contract type to use is important to ensure cost-effectiveness and performance.*

#### *Pricing Structure:*

*The non-Federal entity must perform a cost or price analysis in connection with every procurement action (including modifications) in excess of the Simplified Acquisition Threshold. The exact method and degree of analysis will vary depending on the exact circumstances and facts of a particular procurement situation, but the non-Federal entity must, as a starting point, make independent estimates before receiving bids or proposals.<sup>11</sup>*

1. **Fixed Price.** All contracts awarded under a competitive sealed bidding result in some type of "fixed price" arrangement, normally a firm fixed price. Fixed price contracts may also be awarded under other contracting methods such as negotiation/competitive proposals, for instance, where the use of sealed bidding would be inappropriate because discussions with the contractor are deemed necessary. Fixed price contracts have the advantage that the risk rests with the contractor. Firm fixed price contracts may be appropriate when:
  - a. It is possible to describe exactly what is needed to satisfy the requirement;
  - b. Across the table discussions are determined not necessary, and
  - c. It is determined that there is adequate competition available.

Other types of fixed price contracts include:

- Fixed price with fixed price with economic price adjustment, and
- Fixed price incentive.

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*TIP: Recipients must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs.*

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2. **Cost Reimbursement.** Under cost reimbursement contracts, contractors are paid both the allowable incurred cost (i.e., allowable actual expenses) and a

predetermined fee or profit. Contractors should be reimbursed for their actual expenditures (no accruals may be reimbursed) no more often than bi-weekly. Normally, contractors are reimbursed in monthly increments. Some procuring organizations

<sup>11</sup> [2 C.F.R. § 200.324.](#)

permit withholding of a small percentage of each reimbursement request to ensure final delivery and contract close-out. Inasmuch as contractors are incrementally reimbursed as the contract progresses, the risk to the contractor is minimized.

The most common type of cost reimbursement contract is the cost-plus fixed fee (CPFF). In this type of contract the fee (on fixed price contracts it is defined as profit) is negotiated front-end and does not change. On cost reimbursement contracts, a ceiling is placed on the estimated cost. Even though additional dollars may be added under certain conditions, the fee does not change as long as the contract remains in-scope. Any contractual situation that automatically increases the fee when additional dollars are added is known as "cost plus percentage of cost" and is prohibited.<sup>12</sup> Other types of cost reimbursement contracts are:

- Cost contracts.
- Cost sharing contracts.
- Cost plus incentive fee contracts.
- Time and materials contracts. These contracts are those where the cost to the non-Federal entity is the sum of the actual cost of the materials plus the direct labor hours charged at fixed hourly rates, reflecting wages, general and administrative expenses, and profit. Labor Hour contracts are identical to time and materials contracts except that no materials are involved. These contracts may be used only after a

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*TIP: Time and materials contracts may be used when the non-Federal entity makes a determination that no other type of contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.*

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determination that no other contract type is suitable, and only if the contract includes a ceiling price that the contractor exceeds at its own risk.<sup>13</sup>

### Overall Structure:

1. **Task and delivery order** contracts are used when exact time of delivery or the exact amount needed is unknown. Indefinite delivery contracts may be "indefinite delivery/indefinite quantity" (ID/IQ) or "indefinite delivery/definite quantity" (ID/DQ). If the exact amount needed is not known, the contract may include a guaranteed minimum in the case of an ID/IQ or a promise not to order from others in the case of a requirements contract.
2. **Letter contracts** are used when exigency requires an immediate binding agreement so work can begin, but time does not permit negotiation of a definitive contract. When the

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<sup>12</sup> [2 C.F.R. § 200.324\(d\)](#).

<sup>13</sup> [2 C.F.R. § 200.318\(j\).](#)

definitive contract is awarded, the letter contract is superseded and letter contract dollars expended will be incorporated in the definitive contract. These contracts should be used with care and only when truly necessary.

3. **State, tribal, or local contractor lists.** When pre-approved competition has already occurred, it may allow for an entity to *piggy-back* off the existing contract as long as it is consistent with State, tribal, or local laws and procedures.

The above-listed contracts are summarized on the chart located on pages 32 — 34 of this Guide



## Contract Type Checklist

No.	Question	Yes	No
1.	<p>Can the deliverables be specifically identified and the quality measurable?</p> <p>If the answer is “Yes,” then a fixed price contract may be properly utilized, either by using competitive sealed bidding procedures, or, if discussions are necessary, negotiated procurement (i.e., competitive proposals) procedures.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Should the contractor logically be able to assume the “risk” for contract performance?</p> <p>If the answer is “Yes,” a fixed price contract is appropriate.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Is the contractor’s accounting system capable of segregating costs so proper charges may be made to the non-Federal entity contract for invoicing purposes?</p> <p>If the answer is “No,” another type of contract other than cost reimbursement must be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>Realizing that cost reimbursement contracts require more contract administration responsibilities, is the non-Federal entity prepared to accept this responsibility?</p> <p>If the answer is “No,” steps must be taken to correctly determine whether another type of contract may be appropriate prior to the award of any cost-reimbursement-type contract vehicle.</p>	<input type="checkbox"/>	<input type="checkbox"/>
5.	<p>Time and Materials, indefinite quantity, and requirements contracts require that orders against the contract be negotiated and placed before the contractor begins work. Will the non-Federal entity be in a position to describe individual tasks to be accomplished as they generate?</p> <p>If the answer is “No,” consideration should be given to other contractual types.</p>	<input type="checkbox"/>	<input type="checkbox"/>
6.	<p>Concerning “Letter Contracts,” are monetary limits along with a target date for definitization shown on the document?</p> <p>If the answer is “No,” the letter contract should be changed to accommodate these two points.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Guide to Selection of Contract Types

The following is a non-exhaustive list of examples of some of the contracts types that are allowed for federal procurement under the FAR. Non-Federal entities may find it useful to consider these in determining the procurement approach that may be appropriate for a particular requirement.

Type	Applicability	Essential Elements	Limitations
<b>Firm-Fixed Price</b>	Fair and reasonable prices can be established at inception. For example: <ul style="list-style-type: none"> <li>• Reasonably definite design or performance specifications;</li> <li>• Realistic estimates;</li> <li>• Adequate competition, and</li> <li>• Valid cost or operating data that provides reasonable price comparisons.</li> </ul>	Initial fixed-price places 100% responsibility and risk on the contractor.	Non-Federal entity and contractor must agree on fixed-price at inception.
<b>Fixed-Price with Escalation</b>	Market or labor conditions unstable over extended production period.	Ceiling on upward adjustment; downward adjustment appropriate where elements escalated may fall below base levels provided in contract.	Contingencies are industry-wide and beyond contractor control; contingencies must be specifically defined in the contract.
<b>Fixed-Price Incentive</b>	Where cost uncertainties exist and there is the possibility of cost reduction and/or performance improvements by giving contractor (i) a degree of cost responsibility and (ii) a positive profit incentive.  <u>Firm Target Type:</u> Firm target and final profit adjustment formula can be negotiated initially.	<u>Firm Target:</u> Target cost; target profit; price ceiling; and profit adjustment formula.	Adequate Contractor accounting system required. Must determine that any other contract type is impractical. Used for development and production procurements.

## Guide to Selection of Contract Types

Type	Applicability	Essential Elements	Limitations
<p><b>Cost-Plus Incentive Fee (CPIF)</b></p>	<p>Uncertainties in Performance or requirements -- Impossible or impractical to estimate costs firmly or circumstances do not allow for the contract requirements to be defined sufficiently for a fixed price contract.</p> <p>Development and test when incentive formula can provide positive incentive for effective management. Where feasible, use performance incentives together with cost and schedule incentives.</p>	<p>Uncertainties in Performance or requirements— Impossible or impractical to estimate costs firmly or circumstances do not allow for the contract requirements to be defined sufficiently for a fixed price contract.</p>	<p>Adequate Contractor accounting system required. Non-Federal entities must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs.</p>
<p><b>Cost-Plus-Fixed-Fee</b></p>	<p>Uncertainties in Performance or requirements -- Impossible or impractical to estimate costs firmly. or circumstances do not allow for the contract requirements to be defined sufficiently for a fixed price contract</p> <p><u>Term Form:</u> Research preliminary exploration, or study when level of effort is initially unknown (or development and test when a CPIF is impractical).</p> <p><u>Completion Form:</u> Research or other development effort when the task or job can be clearly defined, a definite goal or target expressed, and a specific end product required.</p>	<p>Uncertainties in Performance or requirements -- Impossible or impractical to estimate costs firmly. or circumstances do not allow for the contract requirements to be defined sufficiently for a fixed price contract</p> <p>-- Impossible to estimate costs firmly. Negotiated estimate of costs; fee fixed initially except for changes in the work or services required.</p>	<p>Adequate Contractor accounting system required. Non-Federal entities must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs.</p>
<p><b>Time and Materials (Labor-Hours)</b></p>	<p>Not possible initially to estimate extent or duration of work (L-H used where materials not involved), e.g., engineering or design services, repair, maintenance, or overhaul.</p>	<p>Direct labor hours specified at fixed hourly rates; direct materials at "cost." Ceiling price shall be established.</p>	<p>Determination that no other type of contract is suitable. Non-Federal entities must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs.</p>

## Guide to Selection of Contract Types

Type	Applicability	Essential Elements	Limitations
<b>Letter Contract</b>	Exigency requires immediate binding agreement so work can begin, but time does not permit negotiation of a definitive contract.	Maximum government liability, type of definitive contract, as many definitive contract provisions as possible.	No other contract type suitable.
<b>State, Tribal, or Local Contractor Lists</b>	Where adequate competition has occurred and the product or service offered meets the needs of the project.	Follow local/tribal/state regulations.	Ensure that state, tribal, or local geographic presences have not been used in the procurement evaluation.
<b>Task and Delivery Orders</b>	<p>Exact time of delivery unknown.</p> <p><u>Definite Quantity:</u> Quantity known, delivery period can be specified; supplies available or have a short lead time.</p> <p><u>Requirements:</u> Preciseness of designated activities during a definite period not known initially.</p> <p><u>Indefinite Quantity:</u> Impossible to know precise quantities needed by designated activities during a definite period and government cannot commit itself beyond a minimum.</p>	<p><u>Definite Quantity:</u> Provision for delivery to designated points or upon order.</p> <p><u>Requirements:</u> Estimated total quantity; maximum and minimum total quantity where feasible; maximum and minimum order where appropriate.</p> <p><u>Indefinite Quantity:</u> Stated maximum and minimum total quantity; maximum and minimum order where applicable.</p>	Firm fixed-price, fixed-price with escalation, or fixed-price with redetermination only.

## Chapter 13

### Code of Conduct

***The non-Federal entity must maintain written standards of conduct covering conflict of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. The standards of conduct must provide for disciplinary actions to be applied for violations by officers, employees, or agents of the non-Federal entity.<sup>14</sup>***

No employee, officer, or agent of the non-Federal entity shall participate in selection, award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved (*DOJ strictly applies this standard*). Such a conflict would arise when:

- The employee, officer or agent, or
- Any member of his/her immediate family, or
- His or her partner, or
- Any organization which employs, or is about to employ, has a financial or other interest in or receives or stands to receive a tangible personal benefit from a firm being considered for a contract.

Non-Federal entity personnel involved in the procurement process must be ever alert for situations that may create a real, or even apparent, conflict of interest. Common sense and adherence to standards and codes of conduct will go a long way toward eliminating potential problems.

Non-Federal entity personnel should additionally:

- Be familiar with any code of ethics guidance published by or available to their organization.
- Neither solicit nor accept gifts, favors, gratuities, or anything of monetary value from contractors or parties to subcontracts. In this connection, non-Federal entities may set standards to address situations where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
- Avoid, at all times, even the appearance of a conflict of interest.
- Ensure that proposal evaluators (price and technical) or members of their immediate families do not own stock or have other financial interest in the companies being evaluated.

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<sup>14</sup> [2 C.F.R. § 200.318\(c\)](#).

- Refer any problem that arises concerning conflict of interest to upper management and legal counsel, as appropriate.

**Organizational Conflict of Interest:**<sup>15</sup>

Organizational conflicts of interest are conflicts of interests that arise where the non-Federal entity is or appears to be unable to conduct an impartial procurement action due to relationships with a parent company, affiliate, or subsidiary organization. Where a non-Federal entity has a parent, affiliate or subsidiary organization that is not a state, local, or tribal government, the non-Federal entity's written standards of conduct must also cover organizational conflicts of interest.

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<sup>15</sup> [2 C.F.R. § 200.318\(c\)\(2\)](#).

## Code of Conduct Checklist

No.	Question	Yes	No
1.	<p>Is there any indication that there is any inappropriate action on the part of either the non-Federal entity or the contractor from either an individual or organizational conflict of interest standpoint?</p> <p>If the answer is “Yes,” the non-Federal entity’s top management, in concert with legal counsel, should determine the severity of the problem and enforce sanctions and notify proper authorities.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Is there any indication the SOW might be restrictive?</p> <p>If the answer is “Yes,” the SOW must be corrected and the RFP amended or canceled, as appropriate.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Have there been any protests or hints of improprieties from any outside sources?</p> <p>If the answer is “Yes,” the validity must be determined and action taken accordingly.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>Has there been an appearance of conflicts of interest relating to the proposed contractual action?</p> <p>If the answer is “Yes,” a thorough investigation should be conducted and any required corrective action taken.</p>	<input type="checkbox"/>	<input type="checkbox"/>
5.	<p>Have cost and technical evaluation committee members evaluating proposals under competitive negotiation procedures signed a statement confirming the fact that they or members of their immediate family do not own stock in the companies being evaluated?</p> <p>If the answer is “No,” a signed statement should be obtained from each evaluator.</p>	<input type="checkbox"/>	<input type="checkbox"/>
6.	<p>Has “brand name or equal” been used excessively in similar solicitations that might be interpreted as leading to a conflict of interest situation?</p> <p>If the answer is “Yes,” the work specification, if possible, should be expanded in order to achieve more competition.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 14

### Price and Cost Analysis

***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.<sup>16</sup>***

**Price Analysis** involves a comparison of the bottom line price quoted by the offeror with prices paid on other contracts for the same or similar materials or services; a review of trade publications for comparability; a comparison of prices quoted by other respondents to the solicitation (does not apply to sole source contracts); and any other comparison available to the non-Federal entity. The purpose of price analysis is to determine that the price quoted is within range of acceptability to the non-Federal entity.

**Cost Analysis** involves an analysis of the individual elements of cost (as requested by the solicitation) as stated in the contractor's cost proposal. Examples of individual elements of cost include direct labor, fringe benefits, overhead (indirect costs), materials, travel, subcontracts, etc. Questionable individual elements of cost become negotiation targets for the non-Federal entity during the subsequent negotiation with the contractor.

Price and Cost Analysis are required for all proposals submitted by offerors for evaluation and negotiation by the non-Federal entity. Non-Federal entities should make independent estimates before receiving bids or proposals. Contents of the cost proposal should be in consonance with the contractor's accounting system which must be operationally capable of segregating costs by contract. Offerors should certify that individual elements of cost are true, correct and verifiable from the contractor's accounting system.

Non-Federal entities should compare graphically each contractor's cost proposal using spreadsheets. However, keep in mind that accounting systems differ between contractors and exact dollar comparison between individual cost elements may not constitute a valid comparison. For example, one contractor may charge a certain expense item to overhead (indirect costs), whereas another contractor may charge an identical expense item as a "direct" charge to the contract.

Price Analysis and Cost Analysis are normally used in concert with each other. Each should support the other.

From an operational standpoint, this important facet of an effective negotiation plan cannot be overlooked or minimized.

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<sup>16</sup> [2 C.F.R. § 200.324](#).



## Price and Cost Analysis Checklist

No.	Question	Yes	No
1.	<p>Is the total price determined to be fair and reasonable? Does it compare favorably with the sum total of the individual elements of cost that have been analyzed?</p> <p>If the answer is “No,” (with a limited tolerance allowed), then further effort is required to make these two figures more compatible.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Was the overhead (indirect cost) rate used in the contractor’s proposal determined by audit?</p> <p>If the answer is “Yes,” determine when audit was completed and whether the overhead (indirect cost) rate can be categorized as current.</p> <p>If the answer is “No,” determine on what basis the overhead (indirect cost) rate was calculated and then validate acceptability.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Was a spreadsheet used to show graphically a comparison of the elements of cost?</p> <p>Even though a spreadsheet is not mandatory, its use is highly recommended.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>Were individual results from cost analysis used to determine negotiation cost targets?</p> <p>Remember the proposal is the contractor’s. Justification is required for any element of cost questioned by the non-Federal entities.</p>	<input type="checkbox"/>	<input type="checkbox"/>
5.	<p>If possible, non-Federal entities should adhere to maximum Federal fee limitations under cost reimbursement arrangements, i.e., 10% on estimated cost, 15% of the estimated cost on Research and Development, and 6% of the estimated cost of Construction or Architectural Engineering. Does the negotiated fee fall within these stated limitations?</p> <p>If the answer is “No,” consider alternatives with upper echelon non-Federal entity management.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 15

### Protests

***Non-Federal entities alone will 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.<sup>17</sup>***

Any contractor or aggrieved party has the right to protest actions before or after the award of the contract. In accordance with good administrative practice and sound business judgment, non-Federal entities shall be responsible for the settlement of all contractual responsibilities arising out of contract solicitations and awards. Issues that might initiate a protest include:

1. Source evaluation activity
2. Protests
3. Disputes (differences of opinion)
4. Claims
5. Any other pertinent issues.

As a best practice, protests should be in writing to the non-Federal entity. Non-Federal entities should follow local procedures for resolution in order that effective due process may be achieved. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts.

In summary, the non-Federal entity is responsible for handling and resolving all contractual activity protests. Ordinarily, except in matters of direct federal concern, a Federal awarding agency will not substitute its judgment for that of the non-Federal entity. However, this should not be construed that Federal advice should not be sought when considered appropriate by the non-Federal entity.

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<sup>17</sup> [2 C.F.R. § 200.318\(k\)](#).

## Protests Checklist

No.	Question	Yes	No
1.	<p>Has the aggrieved party submitted his protest in writing?</p> <p>If the answer is “No,” consider recommending that the protest be submitted in writing if the magnitude is great enough to have serious operational impact.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Has non-Federal entity’s top management been alerted to the seriousness of the protest and has legal counsel been sought?”</p> <p>If the answer is “No,” top management and legal counsel should be advised.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Has the non-Federal entity exerted ample effort toward resolution of the protest before seeking help from awarding Federal agency?</p> <p>If the answer is “No,” the non-Federal entity should exert ample effort toward resolution before seeking help from awarding Federal agency.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 16

### Contracting with Small and Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms

*The non-Federal entity must take all necessary affirmative steps to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.<sup>18</sup>*

<b>Small Business Firms:</b>	Designated by the Small Business Administration.
<b>Minority Business Firms:</b>	51 percent Minority Owned/Operated.
<b>Women's Business Enterprises:</b>	Small business that is at least 51 percent owned by a woman or women.
<b>Labor Surplus Area Firms:</b>	Firms geographically located in distressed labor surplus areas designated by the Secretary of Labor.

Non-Federal entities shall ensure the following affirmative steps:

1. Placement of 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. Allocating requirements into smaller amounts, when feasible, to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery requirements, when feasible, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce, and
6. When the non-Federal entity's contractor(s) (for these purposes, the "prime" contractor(s)) may award a subcontract(s), requiring the "prime" contractor(s) to take these steps (1-5) for its subcontract(s).

Notwithstanding the fact that no contracting goals are established, the non-Federal entity is expected to provide statistics on contract awards to DOJ upon request.

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<sup>18</sup> [2 C.F.R. § 200.321](#).

**Contracts with Small and Minority Firms, Women’s Business Enterprises,  
and Labor Surplus Area Firms Checklist**

No.	Question	Yes	No
1.	Are statistics readily available concerning contract awards to these firms?  If the answer is “No,” develop a simplified reporting system.	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 17

### Contract Administration

***Non-Federal entities will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.<sup>19</sup>***

Contract administration refers to post award actions by the non-Federal entity to ensure that the terms and conditions of the contract are met. It takes continual vigilance on the part of the non-Federal entity to ensure that contract deliverables are met to accommodate mandated project requirements. A non-Federal entity will follow the same procedures for procuring property and services under a grant as it uses for its non-Federal funds. Other non-Federal entities should follow procedures outlined in this guideline.

1. **Delegations.** Non-Federal entity management shall delegate administration responsibility to designated personnel selected for their technical and administrative capability to administer the contract effectively. Any disagreement between technical and administrative personnel shall be referred to top level non-Federal entity management for resolution.
2. **Inspection and Acceptance.** Contractor deliverables shall be inspected before official acceptance by the non-Federal entity to ensure that contract requirements are met. Acceptance shall be made officially only after the non-Federal entity determines that contract terms and conditions have been met.
3. **Progress Reports.** Under cost reimbursement contracts, progress/status reports are required normally by the SOW. These reports shall be reviewed by the non-Federal entity to determine if contract delivery milestones are being met, and, if they are not, the seriousness of the delinquency should be analyzed and, if appropriate, corrective action taken.
4. **Invoice Processing.** Under cost reimbursement contracts, reimbursement invoices are submitted normally by the contractor on a monthly basis. However, in the case of a small or disadvantaged contractor, invoices may be submitted every two weeks. There must be a correlation between dollars paid incrementally to the contractor and contract progress in consonance with an acceptable tolerance level that is established. Invoices should be processed as expeditiously as possible with dollar hold-backs (to be paid after completion/final acceptance) considered in determining the net amount of the incremental dollar reimbursement.

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<sup>19</sup>[2 C.F.R. 200.318\(b\)](#).

5. **Consent to Subcontract.** Non-Federal entities shall establish procedures to review and give prior consent for subcontracts awarded by a prime contractor(s). Monetary consent levels may be established at the discretion of the non-Federal entity.
  
6. **Non-Federal entity Contract Close-out.** Non-Federal entity contract close-out is an important function of contract administration and may be characterized logically as the last of the many functions related to contract administration.

## Contract Administration Checklist

No.	Question	Yes	No
	<b>Delegations</b>		
1.	<p>Have delegations been made in writing to include all operational and administrative aspects of contract post award activity?</p> <p>If the answer is “No,” action should be taken to have proper delegations made in writing.</p>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Inspection and Acceptance</b>		
2.	<p>For materials and hardware, do invoices submitted by the contractor include evidence of acceptance by the non-Federal entity?</p> <p>If the answer is “No,” the invoice shall not be paid until evidence of acceptance is indicated.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>On cost reimbursement contracts, before acceptance by the non-Federal entity, has contract dollar reimbursement been reconciled with available contract specified funding?</p> <p>If the answer is “No,” procedures shall be developed to verify funding availability before acceptance is made.</p>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Progress Reports (cost reimbursement contracts)</b>		
4.	<p>Are progress reports reviewed to validate correctness and to determine if contract delivery schedules/milestones are being met?</p> <p>If the answer is “No,” progress related to milestones should be analyzed to determine contract status. If the contractor is in violation of the contract requiring progress reports, action should be taken to enforce the contract terms and conditions.</p>	<input type="checkbox"/>	<input type="checkbox"/>



No.	Question	Yes	No
<b>Inspection and Acceptance</b>			
5.	<p>Are invoices submitted by the contractor for materials and equipment analyzed by the non-Federal entity before authorizing payment?</p> <p>If the answer is “No,” procedures shall be developed to analyze all invoices submitted to ensure availability.</p>	<input type="checkbox"/>	<input type="checkbox"/>
6.	<p>Under cost reimbursable contracts, are the dollars requested by the contractor compatible with progress indicated on status reports?</p> <p>If the answer is “No,” percent of contract completion indicated on progress reports should be compatible with total funds requested for reimbursement.</p>	<input type="checkbox"/>	<input type="checkbox"/>
7.	<p>Is availability of funds determined before approval of the invoice authorizing payment?</p> <p>If the answer is “No,” funds availability must be determined before authorizing the invoice for payment.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Non-Federal Entity Contract Close-Out</b>			
8.	<p>Have all contract funds been reconciled? Have any remaining funds been de-obligated? Have all invoices been paid?</p>	<input type="checkbox"/>	<input type="checkbox"/>
9.	<p>Has any property furnished or purchased by the non-Federal entity been returned or accounted for in accordance with existing procedures?</p>	<input type="checkbox"/>	<input type="checkbox"/>
10.	<p>Has the non-Federal entity received a certification from the contractor that all bills relating to the contract have been paid?</p>	<input type="checkbox"/>	<input type="checkbox"/>
11.	<p>Have all contract deliverables been inspected and accepted by the non-Federal entity?</p>	<input type="checkbox"/>	<input type="checkbox"/>
12.	<p>Have any law suits/legal actions relating to contract activity been settled?</p>	<input type="checkbox"/>	<input type="checkbox"/>

No.	Question	Yes	No
13.	On cost reimbursement contracts, is the non-Federal entity satisfied that all claimed costs are allowable costs relating to contract activity?	<input type="checkbox"/>	<input type="checkbox"/>
14.	<p>Has a bi-lateral amendment been executed reflecting contract close-out?</p> <p>Contract close-out is not complete if any of questions 8 to 14 reflect a "No" response.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 18

### Other Considerations

#### 1. Lease vs. Purchase

***Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.<sup>20</sup>***

Before entering into a leasing arrangement for equipment or purchasing equipment, a lease-purchase analysis should be performed by the non-Federal entity to determine economic feasibility. This analysis should reflect a comparison of forecasted costs for both an outright purchase and a leasing arrangement. If determination is made to enter into a lease/purchase, non-Federal entities shall ensure that a certain part of the lease cost (dollars) will apply toward the purchase price of the equipment (indicated in the lease). In addition, non-Federal entities shall ensure that at a predetermined time, the equipment under lease is either:

- Purchased under the terms of the lease, or
- Returned to the lessor and action is taken to cancel the lease.

#### 2. Documentation

***Non-Federal entities will maintain records sufficient to detail the significant history of a procurement. These records will include, but are 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.<sup>21</sup>***

It is extremely important that non-Federal entities document contractual actions in order to formulate and maintain an audit trail. The official contract file should reflect in detail all of the steps in the procurement process and serves as the official accountability document.

#### 3. Other Resources<sup>22</sup>

Non-Federal entities are encouraged to use other resources such as donated property and Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

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<sup>20</sup> [2 C.F.R. § 200.318\(d\)](#).

<sup>21</sup> [2 C.F.R. § 200.318\(i\)](#).

<sup>22</sup> [2 C.F.R. § 200.318\(f\)](#).

#### 4. Use of Value Engineering<sup>23</sup>

Non-Federal entities are 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.

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<sup>23</sup> [2 C.F.R. § 200.318\(g\)](#).

## Chapter 19

### Contracting Concepts Summary

The following lists show 1) practices to employ to have a successful procurement program, and 2) those practices to avoid that may result in unsatisfactory contracts being awarded by the recipient agency.

#### 1. Contracting Practices to Employ

- a. Ensure adequate competition.
- b. Prepare Invitation for Bid (IFB)/Request for Proposal (RFP).
- c. Maintain bidders list(s).
- d. Conduct interviews (for RFP).
- e. Obtain prior approval (where required).

#### 2. Contracting Practices to Avoid

- a. Place unreasonable requirements.
- b. Require unnecessary experience.
- c. Engage in noncompetitive pricing.
- d. Engage in organizational conflicts-of-interest.
- e. Engage in wasteful or needlessly duplicative spending.
- f. Require unreasonable timeframes.