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CONNECTING AMERICA'S COMMUNITIES

**U.S. Department of Commerce
National Telecommunications and Information Administration
Broadband Technology Opportunities Program (BTOP)**

BTOP Procurement PCC/SBA



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Agenda

- Relevant Federal Rules and Regulations
- Procurement Standards
- Procurement Procedures and Methods
- Cost and Price Analysis
- Contracts Administration
- Sub-Recipients vs. Vendors





Three sets of federal rules and regulations govern BTOP grant awards

- Uniform Administrative Requirements
 - 15 CFR Part 14 or 24, depending on the identity of the recipient

- Cost Principles
 - OMB Circulars A-21, A-87, A-122 or 48 CFR Part 31.2

- Audit requirements
 - OMB Circular A-133





Federal rules and regulations vary based on a grant recipient's organization type

Organization Type	Administrative Requirements	Cost Principles	Audit Regulations and Standards
For Profit Entities	15 CFR Part 14	48 CFR Part 31.2 (Federal Acquisition Regulations)	Government Auditing Standards (The Yellow Book)* OMB Circular A-133, Subpart B § 235
Institutions of Higher Education	15 CFR Part 14	2 CFR Part 220 (OMB Circular A-21)	OMB Circular A-133
Non Profit Organizations	15 CFR Part 14	2 CFR Part 230 (OMB Circular A-122)	OMB Circular A-133
Hospitals	15 CFR Part 14	45 CFR, Part 74(E)	OMB Circular A-133
State, Local and Tribal Governments	15 CFR Part 24	2 CFR Part 225 (OMB Circular A-87)	OMB Circular A-133





Procurement Standards: Overview

- BTOP recipients must comply with federal regulations governing procurement.
- All recipients, regardless of type, must have written procurement procedures in place.
- Competition is required unless otherwise justified.
- The following standards apply to the procurement of supplies and other expendable equipment property, equipment, real property, and other services with Federal funds.





Procurement Standards: Codes of Conduct

- The requirements around codes of conduct, as specified in Parts 14 and 24, are similar.
- All recipients must maintain **written standards** of conduct governing the performance of their employees involved in the administration of award and contracts.
- No employee, officer, or agent of the recipient or subrecipient may participate in the selection, award, or administration of a contract, subcontract, or sub-grant supported by Federal funds if a real or apparent conflict exists.
- A **conflict of interest** may occur when an employee, officer, agent, or his/her family, partner, or organization has a financial or other interest in the firm selected for a contract.
- *If there is a potential conflict of interest*, no employee, officer, or agent should participate in the selection, award, or administration of a contract supported by Federal funds.
- Recipients or subrecipients may not solicit or accept gratuities or favors from contractors, potential contractors, or sub-agreement parties.





Procurement Standards: Competition

- All procurement transactions should be conducted in a manner that allows for open and free competition.
 - Awards should be made to the bidder with the most appropriate proposal, given the requirements listed in the solicitation, that is also advantageous to the recipient (price, quality, etc.).
 - Recipients must understand and have plans to mitigate potential organizational conflicts of interest and noncompetitive practices among contractors that could either restrict or eliminate competition.
 - For example, a contractor that develops the SOW or RFP for work cannot bid on the same work.





Procurement Procedures: General

- Develop written procurement procedures.
- Utilize small businesses, socially disadvantaged businesses, minority-owned businesses, and women-owned enterprises, when possible.
- Purchase American-made equipment and products, to the extent possible, with funding provided under award.
- Determine the type of procurement methods that will be used.
- Enter into contracts only with responsible contractors who are able to perform successfully under the terms and conditions set out by the recipient.
 - These may include: integrity, past performance, financial and technical resources, and accessibility to other resources that may be required.
- Sub-granting and sub-contracting to the DOC or another Federal Agency, including to employees of such agencies, is prohibited without prior written approval of the Grants Officer.





Procurement Procedures: General (cont.)

- Maintain records and files that demonstrate sufficient details about the procurement.
 - Records may include: basis for contractor selection, justification for lack of competition when competitive bids were not obtained, basis for award cost or price.

- Make available, upon request by NTIA, any technical specifications on proposed procurements to ensure that the item and/or service is the one being proposed for purchase.





Procurement Methods

Competitive Proposals			Noncompetitive Proposals
Small Purchase	Sealed Bids	Proposal Solicitation	
<ul style="list-style-type: none">Simple and informal procurements for securing services, supplies, or other property that <i>do not cost more than \$100,000</i>.	<ul style="list-style-type: none">Procurements are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid is the lowest in price.	<ul style="list-style-type: none">Typically conducted with more than one source submitting an offer and a fixed-price or cost-reimbursement type contract is awarded.	<ul style="list-style-type: none">Entails solicitation of a proposal from only one source or after solicitation of a number of sources, competition is determined to be inadequate.

“Cost-Plus-a-Percentage-of-Cost” and “Percentage of Construction Cost” methods are not allowed.





Procurement Methods: Solicitation of Competitive Proposals

- **Solicitation of competitive proposals** is generally used when:
 - More than one source submits an offer and either a fixed-price or cost-reimbursement type contract is awarded;
 - Conditions are such that the use of sealed bids is inappropriate.
- This methods requires the grant recipient to take the following actions:
 - Publicize the Request for Proposals and identify all evaluation factors and their relative importance;
 - Solicit proposals from an adequate number of qualified sources;
 - Evaluate the technical merits of the proposals received and select the firm to be awarded; and
 - Comply with state and local procurement laws, as applicable.
- Awards will be made to the firm whose proposal is the most advantageous to the program, considering price and other factors.





Procurement Methods: Small Purchase

- The **small purchase** method is used for procurement of services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold, currently set at \$100,000
- Small purchase procurement is competitive, but follows simplified, less formal procedures.
- Recipients that elect to use the small purchase method must obtain price or rate quotations from an adequate number of qualified sources, usually at least three.
- State, local, and tribal governments may rely on the Federal Simplified Acquisition Procedures.
- Universities, hospitals, nonprofits, and commercial entities may establish a written simplified acquisition process applicable to small procurements
 - The simplified process must comply with the requirements of Sections 14.40-14.48 of the Uniform Administrative Requirements.
 - The threshold for applying a simplified process may not exceed the Federal Simplified Acquisition Threshold, currently set at \$100,000, but may be lower.
 - An entity may look to the Federal Simplified Acquisition Procedures for guidance in establishing its own simplified process.





Procurement Methods: Sealed Bids

- The **sealed bids** method requires the grant recipient to publicly solicit bids and award a firm-fixed price contract to the responsible bidder whose bid is the lowest in price.
- In order for this method to be used, the following conditions must apply:
 - A complete, adequate, and realistic specification or purchase description is available;
 - Two or more responsible bidders are willing and able to compete effectively; and
 - The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.
- All bids are to be publicly opened at the time and place outlined in the Invitation for Bid and a firm fixed-price contract award should be made in writing to the lowest responsive and responsible bidder.
- Any and all bids may be rejected if there is a sound, documented reason.
- This method is preferred for construction, if the required conditions apply.





Procurement Methods: Noncompetitive

- The **noncompetitive** method involves the solicitation of a proposal from only one source.
- This method may only be used when the award of the contract is infeasible under small purchase procedures, sealed bids, or competitive proposals AND one of the following applies:
 - The item is available only from a single source (sole source);
 - The public exigency or emergency for the requirement will not allow for a delay that would result from competitive solicitation;
 - The awarding agency authorizes non-competitive proposals;
 - After soliciting numerous sources, competition is found to be inadequate.
- The grant recipient must engage in cost analysis of the proposal:
 - The grant recipient must verify the proposed cost data and projections, as well as the specific elements of the costs and profits of the vendor.
 - The grant recipient must document the rationale for selecting a sole source procurement, and the method, degree, and results of its cost analysis.





Cost and Price Analysis

- Recipients must perform a cost and price analysis in connection with **every procurement**, including, but not limited to, contract revisions.
- The method and degree of analysis depends on the procurement, but, as a starting point, recipients must make independent estimates before receiving bids or proposals.
 - **Cost** analysis is required when adequate price competition does not exist and for sole source procurements, unless price reasonableness can be established, e.g., using catalog or market pricing of a commercial product sold in substantial quantities to the public.
 - **Price** analysis is required in all other instances.
- A grant recipient must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all other cases where it performs cost analysis.
- Costs or prices based on estimated costs will be allowable only if the costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.
- Recipients must document the cost or price analysis for all procurements.





Contracts Administration

- Recipients should establish and maintain a system for contract administration to ensure contractor conformance with the terms, conditions, and specifications of their contract.
- Recipients are fully responsible for the settlement of all contractual and administrative issues that arise:
 - Source evaluation
 - Protests
 - Disputes
 - Claims
- For key **contract provisions**, please refer to **15 CFR Part 14.48** for higher education institutions, hospitals, nonprofits, and commercial entities and to **15 CFR Part 24 (p.232)** for state, local, and tribal governments.





Procurement: Sub-recipients vs. Vendors

- A BTOP Award Recipient may work with sub-recipients and vendors for assistance throughout the life of the BTOP project, differentiated as follows (See A-133, sec. 210):

Sub-Recipient	Vendor
<ul style="list-style-type: none">• Involved in pursuing achievement of the public purposes of the Award:<ul style="list-style-type: none">– Determines who is eligible to receive what Federal financial assistance;– Has its performance measured against whether the objectives of the Federal program are met;– Has responsibility for programmatic decision making;– Has responsibility for adherence to applicable Federal program compliance requirements; and– Uses the Federal funds to carry out a program of the organization, as compared to providing goods or services for a program of the pass-through entity.• Directly subject to the Award terms and conditions .• Also referred to as: <i>sub-awardee, sub-grantee, partner.</i>	<ul style="list-style-type: none">• Provides products or services for the benefit of the grant recipient.• Does not necessarily have any vested interest in the achievement of the public purposes of the Award.• Also referred to as: <i>contractor, partner.</i>





Procurement: About Sub-recipients

- **Sub-recipients** are actively involved in the activities of the project.
- Through the prime recipient, a sub-recipient performs substantive work on an award project to accomplish the purposes of the BTOP Grant Award.
- Because a sub-award is financial assistance, the terms and conditions that apply to prime recipients generally apply to sub-recipients, as well.
 - For example, sub-recipients must comply with programmatic requirements, administrative requirements in 15 CFR Parts 14 and 24 (as applicable), cost principles, and audit requirements.
 - In addition, all sub-awards are to be made in a manner that provides open and free competition; subrecipients that develop or draft SOWs, for instance, are excluded from competing for such sub-awards.
- The **cost principles and uniform administrative requirements applicable to the sub-recipient are based on the nature of the sub-recipient**, e.g., the state, local, or tribal government, nonprofit, university, or commercial organization.
 - These may not be the same cost principles that apply to the recipient.





Procurement: About Vendors

- **Vendors** or **contractors** are involved in a procurement.
- Vendors do not perform substantive work on the project, but rather provide goods and services to directly benefit the recipient.
- Data requirements for reporting vendor information are reduced and vendors cannot be delegated reporting responsibility.
- Some programmatic requirements apply to vendors, such as those specifically set forth in the NOFA.
- When selecting a vendor, the recipient must follow the procurement standards outlined in 15 CFR Parts 14 and 24.
 - All procurement transactions must be conducted in a manner to provide, to the maximum extent possible, open and free competition.
 - The recipient must be alert to all organizational conflicts of interest as well as other practices among contractors that may restrict or eliminate competition.
 - Recipients must also identify and justify pre-selected contractors.





Procurement: In Sum

Prime Recipient and Subrecipients

Written code of conduct for employees involved in the contract process

Written procurement procedures

Competition to select subrecipients/vendors

Document basis of selection

Justification if not competed

Cost and price analysis

All Project Participants

Ability to perform under standard terms and conditions

Perform with integrity

Record of past performance

Necessary financial resources

Not debarred or on excluded party list

Compliance with certain programmatic requirements, such as nondiscrimination, and open access





Additional Resources

For more information on procurement, please refer to the following documents:

BTOP Compliance: <http://www2.ntia.doc.gov/compliancetraining>

15 CFR Part 14.40-48: <http://oam.ocs.doc.gov/docs/GRANTS/15cfr14.pdf> (p. 153-156)

15 CFR Part 24.36: <http://oam.ocs.doc.gov/docs/GRANTS/15cfr24.pdf> (p. 227 - 233)

2 CFR Part 220 (OMB Circular A-21):
http://www.whitehouse.gov/omb/rewrite/circulars/a021/a21_2004.html

2 CFR Part 225 (OMB Circular A-87): http://www.whitehouse.gov/omb/fedreg/2005/083105_a87.pdf

2 CFR Part 230 (OMB Circular A-122): http://www.whitehouse.gov/omb/fedreg/2005/083105_a122.pdf

48 CFR Part 31.2: https://www.acquisition.gov/far/current/html/Subpart%2031_2.html





Questions?

