

mississippi development authority

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Procurement Policy and Procedures

**Community Services Division
2018**

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INTRODUCTION

The Mississippi Development Authority (MDA), Community Services Division (CSD) administers various grant programs for community development. CSD receives federal funds from the U.S. Department of Housing and Urban Development (HUD) to administer the Community Development Block Grant (CDBG) program and the Appalachian Regional Commission (ARC) for community development activities. As a grant recipient of these federal funds CSD must ensure compliance with the federal procurement requirements governed by 2 CFR Part 200 of the federal procurement regulations are followed for all CDBG and ARC federal grant programs.

All Sub-recipients involved in the procurement and contracting for services related to a federally funded project of CDBG or ARC must ensure that all applicable federal and state procurement requirements are followed throughout the process. The State and Local municipalities often have their own procurement and contracting requirements; however, the use of federal funds requires compliance with 2 CFR 200 of the federal procurement regulations at a minimum. It is the responsibility of the Mississippi Development Authority (MDA) Community Services Division (CSD) to ensure that all Sub-recipients who receive federal funds are effectively following the procurement process. This policy guidebook will incorporate the most stringent method that applies for each procurement method where State and Federal requirements exist for the same purpose.

Please know that No bidding for construction or demolition activities may occur until the appropriate environmental clearance and approval has been provided by the Compliance Bureau.

Generally, acquisition of all property required for the project must be completed in accordance with Uniform Relocation Act prior to taking bids for construction (or demolition). Acquisition includes Real Property, Easements, Donations, etc.)

The Procurement Policy and Procedures can be downloaded at www.mississippi.org/csd/compliance

Definitions: The following are definitions of terms but not all inclusive as listed in the federal regulations. For a complete inclusive listing of definitions please refer to 2 CFR 200.1.

Acquisition cost -Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment -Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation - Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Audit finding - Audit finding means deficiencies which the auditor is required by §200.516 Audit findings, paragraph (a) to report in the schedule of findings and questioned costs.

Auditee - Auditee means any non-Federal entity that expends Federal awards which must be audited under Subpart F—Audit Requirements of this part.

Auditor -Auditor means an auditor who is a public accountant or a Federal, state, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Budget -Budget means the financial plan for the project or program that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Catalog of Federal Domestic Assistance (CFDA) number -CFDA number means the number assigned to a Federal program in the CFDA.

CFDA program title - CFDA program title means the title of the program under which the Federal award was funded in the CFDA.

Capital assets - Capital assets means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include: (a) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; and (b) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

Capital expenditures - Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Claim - Claim means, depending on the context, either: (a) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right: (1) The payment of money in a sum certain; (2) The adjustment or interpretation of the terms and conditions of the Federal award; or (3) Other relief arising under or relating to a Federal award. (b) A request for payment that is not in dispute when submitted.

Class of Federal awards - Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

Closeout - Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in §200.343 Closeout.

Contract - Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward (see §200.92 Subaward).

Contractor - Contractor means an entity that receives a contract as defined in §200.22 Contract.

Cooperative agreement - Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305: **(a)** Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use; **(b)** Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award. **(c)** The term does not include: **(1)** A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or **(2)** An agreement that provides only: (i) Direct United States Government cash assistance to an individual; (ii) A subsidy; (iii) A loan; (iv) A loan guarantee; or (v) Insurance.

Cooperative audit resolution - Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon: **(a)** A strong commitment by Federal agency and non-Federal entity leadership to program integrity; **(b)** Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies; **(c)** A focus on current conditions and corrective action going forward; **(d)** Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and **(e)** Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action - Corrective action means action taken by the auditee that: **(a)** Corrects identified deficiencies; **(b)** Produces recommended improvements; or **(c)** Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan - Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost sharing or matching - Cost sharing or matching means the portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). See also §200.306 Cost sharing or matching.

Cross-cutting audit finding - Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects Federal awards of more than one Federal awarding agency or pass-through entity.

Disallowed costs - Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Equipment - Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.

Expenditures - Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received; **(a)** The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied. **(b)** For reports prepared on a cash basis, expenditures are the sum of: **(1)** Cash disbursements for direct charges for property and services; **(2)** The amount of indirect expense charged; **(3)** The value of third-party in-kind contributions applied; and **(4)** The amount of cash advance payments and payments made to subrecipients. **(c)** For reports prepared on an accrual basis, expenditures are the sum of: **(1)** Cash disbursements for direct charges for property and services; **(2)** The amount of indirect expense incurred; **(3)** The value of third-party in-kind contributions applied; and **(4)** The net increase or decrease in the amounts owed by the non-Federal entity for: **(i)** Goods and other property received; **(ii)** Services performed by employees, contractors, subrecipients, and other payees; and **(iii)** Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency - Federal agency means an “agency” as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

Federal Audit Clearinghouse (FAC) - FAC means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the reporting packages required by Subpart F—Audit Requirements of this part. The mailing address of the FAC is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132 and the web address is: <http://harvester.census.gov/sac/>. Any future updates to the location of the FAC may be found at the OMB Web site.

Federal awarding agency - Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal award - Federal award has the meaning, depending on the context, in either paragraph **(a)** or **(b)** of this section: **(a)(1)** The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability; or **(2)** The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability.

(b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph **(b)** of §200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

Federal award date - Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal financial assistance – (Federal financial assistance means assistance that non-Federal entities receive or administer in the form of: (1) Grants; (2) Cooperative agreements; (3) Non-cash contributions or donations of property (including donated surplus property); (4) Direct appropriations; (5) Food commodities; and (6) Other financial assistance (except assistance listed in paragraph (b) of this section).

(b) For §200.202 Requirement to provide public notice of Federal financial assistance programs and Subpart F—Audit Requirements of this part, Federal financial assistance also includes assistance that non-Federal entities receive or administer in the form of: (1) Loans; (2) Loan Guarantees; (3) Interest subsidies; and (4) Insurance.

(c) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in §200.502 Basis for determining Federal awards expended, paragraph (h) and (i) of this part.

Federal interest - Federal interest means, for purposes of §200.329 Reporting on real property or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the: (a) Federal share of total project costs; and (b) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program - Federal program means: (a) All Federal awards which are assigned a single number in the CFDA. (b) When no CFDA number is assigned, all Federal awards to non-Federal entities from the same agency made for the same purpose must be combined and considered one program. (c) Notwithstanding paragraphs (a) and (b) of this definition, a cluster of programs. The types of clusters of programs are: (1) Research and development (R&D); (2) Student financial aid (SFA); and (3) “Other clusters,” as described in the definition of Cluster of Programs.

Federal share - Federal share means the portion of the total project costs that are paid by Federal funds.

Fixed amount awards - Fixed amount awards means a type of grant agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b) and 200.332 Fixed amount subawards.

General purpose equipment - General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also Equipment and Special Purpose Equipment.

Generally Accepted Accounting Principles (GAAP) - GAAP has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

Generally Accepted Government Auditing Standards (GAGAS) - GAGAS, also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant agreement - Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304: (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;

(b) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(c) Does not include an agreement that provides only: (1) Direct United States Government cash assistance to an individual; (2) A subsidy; (3) A loan; (4) A loan guarantee; or (5) Insurance.

Improper payment - (a) Improper payment means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and

(b) Improper payment includes any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

Indian tribe (or “federally recognized Indian tribe”) - Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Indirect (facilities & administrative (F&A)) costs - Indirect (F&A) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to **establish a number of** pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Intangible property - Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective - Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also §200.28 Cost objective and §200.44 Final cost objective.

Internal controls - Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories: **(a)** Effectiveness and efficiency of operations; **(b)** Reliability of reporting for internal and external use; and **(c)** Compliance with applicable laws and regulations.

Internal control over compliance requirements for Federal awards - Internal control over compliance requirements for Federal awards means a process implemented by a non-Federal entity designed to provide reasonable assurance regarding the achievement of the following objectives for Federal awards: **(a)** Transactions are properly recorded and accounted for, in order to: **(1)** Permit the preparation of reliable financial statements and Federal reports; **(2)** Maintain accountability over assets; and **(3)** Demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(b) Transactions are executed in compliance with: **(1)** Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal program; and **(2)** Any other Federal statutes and regulations that are identified in the Compliance Supplement; and **(c)** Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan - Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of §200.80 Program income. **(a)** The term “direct loan” means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(b) The term “direct loan obligation” means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower. (c) The term “loan guarantee” means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions. (d) The term “loan guarantee commitment” means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government - Local government means any unit of government within a state, including a (a) County; (b) Borough; (c) Municipality; (d) City; (e) Town; (f) Township; (g) Parish; (h) Local public authority, including any public housing agency under the United States Housing Act of 1937; (i) Special district; (j) School district; (k) Intrastate district; (l) Council of governments, whether or not incorporated as a nonprofit corporation under state law; and (m) Any other agency or instrumentality of a multi-, regional, or intra-state or local government.

Major program - Major program means a Federal program determined by the auditor to be a major program in accordance with §200.518 Major program determination or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with §200.503 Relation to other audit requirements, paragraph (e).

Management decision - Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision to the auditee as to what corrective action is necessary.

Micro-purchase - Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

Non-Federal entity - Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Non-profit organization - Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that: (a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (b) Is not organized primarily for profit; and (c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Obligations When used in connection with a non-Federal entity's utilization of funds under a Federal award, obligations means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

Office of Management and Budget (OMB) - OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit - Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly to a non-Federal entity not assigned a cognizant agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in §200.513 Responsibilities, paragraph

Pass-through entity - Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Performance goal - Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance - Period of performance means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. The Federal awarding agency or pass-through entity must include start and end dates of the period of performance in the Federal award (see §§200.210 Information contained in a Federal award paragraph (a)(5) and 200.331 Requirements for pass-through entities, paragraph (a)(1)(iv)).

Personal property - Personal property means property other than real property. It may be tangible, having physical existence, or intangible.

Program income - Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in §200.307 paragraph (f). (See §200.77 Period of performance.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also §200.407 Prior written approval (prior approval). See also 35 U.S.C. 200-212 "Disposition of Rights in Educational Awards" applies to inventions made under Federal awards.

Property - Property means real property or personal property.

Project cost - Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Questioned cost - Questioned cost means a cost that is questioned by the auditor because of an audit finding: (a) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds; (b) Where the costs, at the time of the audit, are not supported by adequate documentation; or (c) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Real property - Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient - Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also §200.69 Non-Federal entity.

Simplified acquisition threshold - Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation. (Also see definition of §200.67 Micro-purchase.)

Special purpose equipment - Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also §§200.33 Equipment and 200.48 General purpose equipment.

State - State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Subaward - Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Sub-recipient – Sub-recipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Supplies - Supplies means all tangible personal property other than those described in §200.33 Equipment. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life. See also §§200.20 Computing devices and 200.33 Equipment.

Termination - Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

Unliquidated obligations - Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance -Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

PROCUREMENTS BY STATES – 2 CFR 200.317

When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used.

The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by 24 CFR §570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations.

LEGAL COUNSEL/ATTORNEY REVIEW

CSD encourages all Sub-recipients to have their legal counsel to review all procurement processes to ensure compliance with applicable Federal, State and City/County laws and CSD Policy and Procedures.

GENERAL PROCUREMENT STANDARDS -2 CFR 200.318

- (a) The Sub-recipient must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.
- (b) The Sub-recipient must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)(1) The Sub-recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the Sub-recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, Sub-recipient entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Sub-recipient.

- (2) If the Sub-recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the Sub-recipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the Sub-recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

- (d) The Sub-recipient procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the Sub-recipient is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

- (f) The Sub-recipient is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The Sub-recipient is 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.

(h) The Sub-recipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The Sub-recipient must maintain records sufficient to detail the history of procurement. These records will include, but are not 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.

(j)(1) The Sub-recipient may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a Sub-recipient is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the Sub-recipient awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The Sub-recipient alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Sub-recipient of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the Sub-recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

CODE OF CONDUCT AND CONFLICTS OF INTEREST - 2 CFR 200.318 (c)(1)

As stated in the General Procurement Standards and to reiterated, the Sub-recipient must adopt and maintain a written code or standards of conduct to govern the performance of its officers, employees or agents engaged in the award or administration of federally awarded contracts per 2 CFR 200.318(c)(1). The general procurement standards in §200.318 require the Sub-recipients to maintain written standards of conduct covering conflicts of interest, including organizational conflicts of interest.

“Organizational conflicts of interest” means that, because of relationships with a parent company, affiliate, or subsidiary organization, the Sub-recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

No employee, officer or agent of the Sub-recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his/her immediate family, his or her partner, or an organization which employs or is about to employ any of the referencing parties, has a financial or other interest in the firm selected for the award.

The Sub-recipient’s officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or from additional sub-agreements. Sub-recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Sub-recipient officers, employees, or agents, or by contractors or their agents. **CSD makes no exception to the conflict of interest provision**, whether the conflict of interest is real, apparent, or may potentially be a conflict.

PROTEST PROCEDURES - 2 CFR 200.318(k)

The Sub-recipient must have protest procedures to handle and resolve disputes relating to their procurements. **All protests of intended contract awards are to be resolved at the local level in accordance with written local procurement policies.** In any case of the protest of an intended award of a contract funded in part or in whole with federal funds, CSD should be notified immediately. Procurement procedures shall include a method to handle protests and designate the ultimate resolving authority. It is the responsibility of the Sub-recipient to resolve all protest associated with a federal funded project. CSD will review protests ONLY after local administrative remedies have been exhausted. That review is limited to violations of program rules, violations of a Sub-recipient’s protest procedures, or a Sub-recipient’s failure to review a protest. *CSD recommends that Sub-recipients consult with local legal counsel regarding protest of an award if a protest should arise.*

COMPETITION - 2 CFR 200.319

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

In general, Companies or individuals providing detailed cost estimates or assisting with the development of procurement documents must be excluded from bidding on proposals as they may have gained an unfair competitive advantage. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

(b) The Sub-recipient 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 in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The Sub-recipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
- (2) Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

- (3) Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (d) The Sub-recipient must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

WRITTEN PROCEDURES FOR CONTRACTOR SELECTION - 2 CFR 200.319(c)

The Sub-recipient must have written selection procedures for procurement transactions (2 CFR 200.319(c)), adequate to ensure that:

1. The purchase of unnecessary or duplicate items is avoided. Where appropriate, an analysis should be made of lease vs. purchase alternatives (2 CFR 200.318c);
2. Whenever possible, use of federal excess and surplus property, or of intergovernmental agreements for procurement or use of common goods and services should be considered as a way to foster greater economy and efficiency (2 CFR 200.318(f));
3. All purchase orders (and contracts) are signed by the grantee’s authorized official(s);
4. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;
5. Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized;
6. A cost or price analysis is performed for every procurement action, including contract modifications, and documentation to that effect is maintained in the grantee’s files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the grantee must make independent estimates before receiving bids or proposals (2 CFR 200.323(a)); and,
7. Profit or fee is negotiated separately from price where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor’s investment, the amount of subcontracting, the quality of past performance, and industry rates for the area (2 CFR 200.323(b)).

PRE-QUALIFIED LISTS OF VENDORS/CONTRACTORS - 2 CFR 200.319(d)

If a Sub-recipient is utilizing a pre-qualified list of vendors and contractors, the listing must be current and developed through open solicitation, include adequate numbers of qualified sources, and must allow entry of other firms to qualify at any time during the solicitation period.

MISSISSIPPI PROCUREMENT TECHNICAL ASSISTANCE PROGRAM

Per Section 31-7-13(c), Mississippi Code of 1972 (Annotated), the Sub-recipient must submit all bid notifications electronically to the Mississippi Procurement Technical Assistance Program (MPTAP). No mail submissions are allowed and will not be processed. The following procedures are to be adhered to for proper bid submission to MPTAP:

- All Bid Notifications for Professional Services and Construction must be submitted electronically to the MPTAP via the Agency Bid Bank Website. In order to submit electronically the personal in charge for Procurement must register to utilize the bid bank. The website is located at www.agencybidbank.mississippi.org.
- All Bid Notifications should be submitted to the Agency Bid Bank on the same day as the bid notification is submitted to the newspaper of general circulations. MPTAP recommends submitting the notification earlier to ensure timely posting. Once submitted, MPTAP will send an acknowledgement of the online submission.
- The Sub-recipient should maintain the MPTAP acknowledgment in the procurement file for recorded keeping and monitoring purposes.

METHODS OF PROCUREMENT - 2 CFR 200.320

All procurement transactions, regardless of dollar amount must be conducted to provide “**free and open competition**”. The appropriate level of procurement is determined by the aggregate dollar amount of goods or services acquired from a single source. Items purchased with CDBG and/or ARC funds, in whole or in part, may not be categorized into activities in order to avoid these requirements. The basic guidelines for the procurement methods has been adopted per the federal procurement regulation at 2 CFR Part 200.320. All Applicants and Sub-recipients must determine the appropriate method of procurement best suited for goods and services needed to for the purpose of the federal project. The five (5) methods of procurement set forth at 2 CFR Part 200.320 are **Micro-Purchase, Small Purchase, Competitive Seal Bids, Competitive Proposals, Non-Competitive Proposals**: The description for each method of procurement and procedures are outlined within this section.

MICRO PURCHASE - 2 CFR 200.320(a)

Procurement by micro-purchase is the acquisition of supplies or services, where the aggregate dollar amount does not exceed the threshold of \$3,000. To the extent practicable, the Sub-recipient must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Sub-recipient considers the price to be reasonable. If the cost of the proposed goods and service is \$3,000 or less the Sub-recipients must take the following steps:

MICRO-PURCHASE PROCUREMENT PROCEDURES

1. The Sub-recipient may identify the supplies and/or services without a competitive process.
2. Although not a competitive process the Sub-recipient is encourage to seek MBE/WBE vendors and known Section 3 vendors where they are potential sources and is qualified to provide the specific type of service being procured.
3. The Sub-recipient must document the method of procurement utilized and document the vendor selected for the services.
4. Award to the lowest responsive bidder.
5. File and maintain all documentation related to the micro-purchase procurement in the procurement historical file.

SMALL PURCHASE - 2 CFR 200.320 (b)

Procurement by small purchase are those relatively simple and informal procurement method for securing services, supplies, or other property without formal advertising, where the cost is no more than the \$50,000. If the small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. (*CSD considers an adequate number of sources to be 2 or more*). If the cost of the proposed goods and service is \$50,000 or less the Sub-recipients must take the following steps:

SMALL PURCHASE PROCUREMENT PROCEDURES

1. Generate the specifications and provide to two (2) or more qualified firms for the service.
2. Notify two (2) or more MBE/WBE vendors where they are potential sources and is qualified to provide the specific type of service being procured. *The Sub-recipient is encouraged to solicit known Section 3 vendors where they are identified a potential sources.

3. After receiving two (2) or more quotes, the Sub-recipient should document the name, address and phone number of the businesses and the price quotes received from each source.
4. Make the award to the lowest responsive and responsible source.
5. Notify all bidders in writing as to whether or not they are the apparent lowest responsive bidder.
6. Execute the contract and/or agreement to the lowest responsive bidder.
7. File and maintain all documentation related to the small purchase procurement in the procurement historical file.

COMPETITIVE SEALED BIDS - 2 CFR 200.320(c)

The Competitive Sealed Bid Method of Procurement, also referred to as an Invitation for Bid (IFB) is best utilized for the purpose of obtaining Contractors for Construction Projects but also for securing Supplies and Services over \$50,000. When utilizing the Competitive Sealed Bid procedure all 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. In order for sealed bidding to be feasible, the following conditions should be present:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two (2) or more responsible bidders are willing and able to compete effectively for the business; and
3. 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.

If sealed bids are used, the following requirements apply:

1. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publically advertised;
2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
3. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
5. Any or all bids may be rejected if there is a sound documented reason

COMPETITIVE SEALED BID PROCUREMENT PROCEDURES

1. An Invitation for Bids (IFB) must be prepared by the Sub-recipient and must include complete and accurate technical specifications with all pertinent attachments that clearly define items or services needed in sufficient detail for the bidders to properly respond.
2. The IFB must be published in a newspaper of general circulation once each week for two (2) consecutive weeks (14 days). The bid opening for construction projects with total cost in excess of \$50,000 must not be less than 15 working days after the last notice appears in the newspaper. Therefore, the bid opening must not be sooner than the 16th working day. Working days are defined as days that your entity is officially open for business. The IFB must state the date, time and location for submission of bids. The legal advertisement must provide information pertaining to where the project plans and specifications may be obtained or reviewed.
3. The Sub-recipient must send the IFB to two (2) or more MBE/WBE via certified mail. The MBE/WBE individual or firm must be potential sources and is qualified to provide the specific type of service being procured.
4. The Sub-recipient must submit the IFB to the Mississippi Procurement Technical Assistance Program (MPTAP) via the agency bid bank website located at www.agencybidbank.mississippi.org before or on the same day as submitted to the newspaper for publication.
5. The Sub-recipient must receive at least two (2) or more responsible bids for competition to be deemed valid. All bids received must be dated and timed stamped and must be recorded and listed on a bid tabulation sheet. If the Sub-recipient does not receive 2 or more bids for the initial bid process, the Sub-recipient must **re-bid** the project as soon as possible to prevent further delays. If the Sub-recipient receives only one (1) bid after the second bid, the Sub-recipient may negotiate with the one (1) bidder for that project. Any bid not received by the date and time stated in the legal advertisement must be returned unopened to the submitter.
6. If awarded, a firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder who has satisfied all requirements according to the IFB.
7. Any or all bids may be rejected if there is a sound documented reason to do so.

8. The Sub-recipient must notify all successful and unsuccessful bidders, in writing.
9. The Sub-recipient may execute contracts with the successful bidder and file all documents related to the sealed bid procurement in the procurement historical file.

ADVERTISEMENT FOR BIDS 20XX (PROJECT TITLE)
CDBG – PF GRANT #XXXX-XX-XXX-PF-XX
TOWN/CITY/COUNTY OF _____, MISSISSIPPI

Sealed bids will be received by the Town/City/County of _____, Mississippi, located at (street address) (P.O. Box), _____, Mississippi _____, until 1:00pm local time on (weekday), (month day, year), for supplying all labor and materials (as specified) necessary for construction of the 20XX (project title).

The work generally consists of (Give a description of the work required).

The above general outline of features of the work does not in any way limit the responsibility of the Contractor to perform all work and furnish all plant, labor, equipment and materials required by the specifications and the drawings referred to therein.

Contract time shall be XXX consecutive calendar days from the effective date shown in the Notice to Proceed. Liquidated damages will be assessed in the amount of the actual costs incurred for each consecutive calendar day beyond the specified contract time.

Special Damages: In addition to the amounts provided for liquidated damages, expenses and other losses, Contractor, in the event of such default, shall pay to the Owner the actual costs, expenses and other losses reasonably incurred by Owner.

Bidder must be qualified under Mississippi Law and show current Certificate of Responsibility issued by the Mississippi State Board of Public Contractors establishing his classification as to the value and type of construction on which he is authorized to bid.

Each Bidder shall write his Certificate of Responsibility Number on the outside of the sealed envelope containing his proposal.

Proposals be submitted in duplicate, sealed and deposited with the City/Town/County of _____, Mississippi prior to the hour and date hereinbefore designated. No bidder may withdraw his bid within 90 days after the actual date of the opening thereof.

Each Bidder must submit with his proposal a separate attachment stating his qualifications to perform the work. The Statement of Qualifications shall list past projects of similar size and nature, a list of references with name and telephone number, a list of key personnel who will perform the work, and other information supporting the Bidder's qualifications.

Awarding public contracts to non-resident Bidders will be on the same basis as the non-resident Bidder's state awards contracts to Mississippi Contractors bidding under similar circumstances. In order to ensure that Mississippi's so-called Golden Rule is followed state law requires a non-resident bidder to attach to his bid a copy of his resident state's current laws pertaining to such state's treatment of non-resident contractors.

Each Bidder must deposit with his proposal, a Bid Bond or Certified Check in an amount equal to five percent of his bid, payable to the City/Town/County of _____, Mississippi, as bid security.



ADVERTISEMENT FOR BIDS (continued)

Bidders shall also submit a current financial statement, if requested, by the City/Town/County of _____, Mississippi.

The successful bidder will be required to furnish a Payment Bond and Performance Bond each in the amount of 100 percent of the contract amount.

Contract Drawings, Contract Specifications, Instructions to Bidders and Bidders Proposal Forms are on file and open to public inspection in the office of the City/Town/County Clerk of _____, Mississippi. Copies of the Instructions to Bidders, Bid Forms, Contract Drawings and Contract Specifications may be procured at the office of the Engineer between 8:00 AM and 5:00 PM, Local Time, Monday through Friday, upon payment of \$100.00 for each set, which will not be refunded. Checks are to be made payable to the Engineer.

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701u (Section 3). CDBG regulations governing the grant require that, to the greatest extent feasible, opportunities for contracting, subcontracting, training and employment arising in connection with this CDBG project will be extended to Section 3 businesses and Section 3 residents.

A pre-bid meeting will be held on (Weekday), (Month Day), 20XX, at XX: 00PM at _____ to discuss the Section 3 requirements of the Contract and outline Contractor's action steps during the bidding process which are necessary to comply with the current CDBG requirements.

Minority and women's business enterprises are solicited to bid on this contract as prime contractors and are encouraged to make inquiries regarding potential subcontracting opportunities, equipment, material and/or supply needs.

The City/Town/County of _____ is an Equal Opportunity Employer. The City/Town/County of _____ hereby notifies all Bidders that it will affirmatively insure that in an contract entered into pursuant to this advertisement will be afforded the full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, sex, national origin, age, disability, sexual preference, marital or veteran status, or any other legally protected status in consideration for an award.

The Engineer is (Name, Address and Telephone Number of Engineer).

The City/Town/County of _____ reserves the right to reject any and all bids and to waive any informalities or irregularities therein.

BY: _____, Mayor/President

City/Town/County of _____, Mississippi

Dates of Publication: _____



COMPETITIVE PROPOSALS - 2 CFR 200.320(d)

The competitive proposal process is normally conducted with **more than one source, (individual, business or firm) submitting a bid or offer**, and either a fixed price or cost-reimbursement type contract is awarded. This method of procurement has two parts, the **Request for Proposals (RFP) and the Request for Qualifications (RFQ)**. RFPs are used to procure all professional services with the exception of A/E professional services. If the Competitive Proposal method is utilized the following requirements apply:

1. The Requests for Proposals (RFP) or Request for Qualification (RFQ) must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
2. Proposals and/or Qualification must be solicited from an adequate number of qualified sources (2 or more);
3. The Sub-recipient must send the RFP and/or the RFQ to two (2) or more MBE/WBE individual or firm via certified mail. The MBE/WBE vendor must be potential sources and is qualified to provide the specific type of service being procured.
4. The Sub-recipient must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
5. Contracts must be awarded to the responsible firm whose proposal or qualifications is most advantageous to the program with price and other factors being considered;
6. The method where price is not used as a selection factor can only be used in procurement of A/E professional services thru RFQs. It cannot be used to purchase other types of services though A/E firms where they are a potential source to perform the proposed effort.

COMPETITIVE PROPOSAL PROCUREMENT PROCEDURES REQUEST FOR PROPOSALS (RFP)

1. The Applicant and/or Sub-recipient should prepare and advertise the Request for Proposals (RFP) at least once in a newspaper of general circulation once each week for two consecutive weeks with the second notice being published on or after the 7th calendar day after the first notice was published.

The bid opening must not be less than 7 working days after the last notice appears in the newspaper. Therefore, the bid opening must not be sooner than the 8th working day. Working days are defined as days that your entity is officially open for business.

2. The Applicant and/or Sub-recipient should submitted the RFP to the Mississippi Procurement Technical Assistance Program (MPTAP) via the bid bank website located at www.agencybidbank.mississippi.org before or on the same day as the newspaper publication.
3. The Sub-recipient must send the RFP to two (2) or more MBE/WBE individuals or firms. The MBE/WBE individual or firm must be potential sources and is qualified to provide the specific type of service being procured. RFPs must be received at the address stated in the legal advertisement, logged in and stamped with the date and time received prior to being opened.

Any RFP not received by the date and time stated in the legal advertisement must be returned unopened to the submitter. After receiving **two (2)** or more RFPs, the Applicant and/or Sub-recipient must establish an Evaluation Committee of knowledgeable members (town council, board of public works members, etc.) and develop an evaluation plan to rank all RFP respondents and provide guidance during the selection process. Where **two (2)** or more RFPs are not received, the Sub-recipient must conduct a cost analysis to determine the cost reasonable and/or responsiveness of the bidder and award the selected respondent. If no RFPs are received, the applicant or Sub-recipient must re-bid the RFP.

Each member of the Evaluation Committee must complete an Evaluation Tabulation Sheet for each Request for Proposal received. Each scorer must use the same scoring and weighting criteria making their best effort to score each statement of qualification fairly and without bias. All Evaluation/Score sheets must be individually signed. The vendor whose proposal is determined to be the most advantageous to the project, based upon qualifications, price and other factors may be selected.

4. The Sub-recipient must notify all unsuccessful bidders in writing.
5. The Sub-recipient may execute contracts with the successful bidder and file all documents related to the procurement in the procurement historical file.

COMPETITIVE PROPOSAL PROCUREMENT PROCEDURES REQUEST FOR QUALIFICATIONS (RFQ)

1. The Applicant and/or Sub-recipient should prepare and advertise the Request for Qualifications (RFQ) at least once in a newspaper of general circulation **once** each week for two consecutive weeks with the second notice being published on or after the 7th calendar day after the first notice was published.

The bid opening must not be less than 7 working days after the last notice appears in the newspaper. Therefore, the bid opening must not be sooner than the 8th working day. Working days are defined as days that your entity is officially open for business.

2. The Applicant and/or Sub-recipient should submitted the RFQ to the Mississippi Procurement Technical Assistance Program (MPTAP) via the bid bank website located at www.agencybidbank.mississippi.org before or on the same day as the newspaper publication.
3. The Sub-recipient must send the RFQ to two (2) or more MBE/WBE individuals or firm via certified mail. The MBE/WBE must be potential sources and is qualified to provide the specific type of service being procured. RFQs must be received at the address stated in the legal advertisement, logged in and stamped with the date and time received prior to being opened. Any RFQ not received by the date and time stated in the legal advertisement must be returned unopened to the submitter.
4. After receiving two (2) or more RFQs, the Applicant and/or Sub-recipient must establish an Evaluation Committee of knowledgeable members (town council, board of public works members, etc.) and develop an evaluation plan to rank all RFQ respondents and provide guidance during the selection process. Where two (2) or more RFQs are not received, the Sub-recipient must conduct a cost analysis to determine the cost reasonable and/or responsiveness of the bidder and award the selected respondent. If no RFQs are received, the applicant or Sub-recipient must re-bid the RFQ.

Each member of the Evaluation Committee must complete an Evaluation Tabulation Sheet for each statement of qualifications received. Each scorer must use the same scoring and weighting criteria making their best effort to score each statement of qualification fairly and without bias. All Evaluation/Score sheets must be individually signed. The vendor with the highest number of points should be selected for price negotiations.

If unable to reach an agreement on the fees to be charged for the services required, the Statement of Qualifications may be rejected and the vendor with the second highest number of points may be approached for price negotiations. This process may continue until an agreement is reached, so long as the vendor selected is capable of providing the requested services based upon quality and other relevant factors. The score sheets must be signed by each member of the Evaluation Committee and maintained in the project file.

5. The Sub-recipient must notify all unsuccessful bidders in writing.
6. The Sub-recipient may execute contracts with the successful bidder and file all documents related to the procurement in the procurement historical file.

PROFESSIONAL SERVICES PROCUREMENT REQUIREMENTS

Administrative and Engineering Services

ADMINISTRATIVE SERVICES

Where an applicant will seek to utilize a private consultant for application preparation and serve as the consultant to manage the project if awarded, the applicant must advertise for both services of application preparation and administrative services prior to submitting an application for funding. The applicant will follow the competitive proposals process as outlines in this procedural guide.

ENGINEERING SERVICES

Where an applicant will seek to utilize an engineer to prepare cost estimates and serve as the project engineer if awarded, the applicant must advertise for an engineer to provide cost estimates and project engineering services prior to submitting an application for funding. The applicant will follow the competitive proposal process as outlined in this procedural guide.

MULTI-SERVICE CONTRACTS

Multi-service contracts are prohibited. The same supplier/offeror cannot provide more than one service to a project. For example, a grant administrator may not serve as both the engineer and the grant administrator for the same project.

Planning and Development Districts are exempt from the procurement requirements.

REQUEST FOR PROPOSALS FOR ADMINISTRATION SERVICES

The Town/City/County of _____ requests proposals from qualified firms or individuals for the preparation of FY 20__ Community Block Grant (CDBG) application(s) and for the administration of approved CDBG project(s). You are invited to submit a proposal, in accordance with this request, to the Office of the Town/City/County Clerk, Town/City/County of _____; (mailing address for entity) no later than ____ p.m. on _____(date)____, 20__.

The Administrative Consultant will be responsible for preparing the CDBG application(s) and for implementing the Town/City/County's CDBG project(s) through close-out, pending award(s) by the Mississippi Development Authority. The Administrative Consultant must carry out all activities in accordance with federal and state laws, regulations and procedures of the CDBG Program. The contract will be on a lump sum basis, and the amount of funds is not known as this time.

The Town/City/County of _____ is an Equal Opportunity Employer. The Town/City/County encourages Minority-owned Business Enterprises (MBEs) and Woman-owned Business Enterprises (WBEs) to submit proposals. The Town/City/County also encourages Section 3 eligible businesses to submit proposals. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 17010) requires, to the greatest extent feasible, that the Town/City/County and its contractors that participate in the above referenced Program give opportunities for job training and employment to lower incomes residents of _____. Section 3 also requires that contracts for work in connection with the Section 3 area be awarded to Section 3 eligible business concerns.

All proposals must be submitted in a sealed envelope and marked with the following language: "Proposal for CDBG Administrative Services." Proposals will be evaluated on the following factors: Qualifications (40 points), Experience (40 points) and Capacity for Performance (20 points). To be evaluated properly, the following must be addressed in detail:

Qualifications – List of qualifications of persons to be assigned to project;

Experience – Information regarding the firm's experience and the projects previously undertaken, including the type and amount of grants awarded, the projects activities, and the status of the projects;

Capacity for Performance – Identify the number and title of staff assigned to provide services.

The Town/City/County will designate a selection committee to evaluate each proposal. The selection committee may hold proposals for a period of not to exceed thirty (30) days for the purpose of reviewing the content of the proposals and investigating the qualifications of the firms and assigned individuals. The Town/City/County reserves the right to reject and and/or all proposals.

The Town/City/County will award a contract with the qualified individual or firm whose proposal has the highest number of cumulative points issued by the selection committee and determined to be the most advantageous to the Town/City/County, price and other factors considered. The contract will include scope and extent of work and other essential requirements. An individual contract will be executed for each application prepared and each awarded project that is administered. The Town/City/County has the authority to terminate the selection at any time.



REQUEST FOR PROPOSALS FOR ENGINEERING SERVICES

The Town/City/County of _____ requests proposals from qualified firms or individuals to provide engineering services for work related to the implementation of approved FY 20__ CDBG project(s). You are invited to submit a proposal, in accordance with this request, to the Office of the Town/City/County Clerk, Town/City/County of _____; (mailing address for entity) no later than ____ p.m. on _____ (date)____, 20 __.

The Engineer will be responsible for preparing project cost estimates for application preparation and if awarded, the selected Engineer will provide all engineering services through project closeout in accordance with federal, state and local laws, regulations and policies. The scope of work includes but is not limited to the following: 1)prepare plans and specifications, 2) distribute bid documents, 3) assist in bid opening and prepare bid tabulation, 4) assist in the execution of construction contracts, 5) hold pre-construction conference, and 6) perform construction inspection including periodic reports to the Town/City/County and approve all payment requests.

The Town/City/County of _____ is an Equal Opportunity Employer. The Town/City/County encourages Minority-owned Business Enterprises (MBEs) and Woman-owned Business Enterprises (WBEs) to submit proposals. The Town/City/County also encourages Section 3 eligible businesses to submit proposals. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 17010) requires, to the greatest extent feasible, that the Town/City/County and its contractors that participate in the above referenced Program give opportunities for job training and employment to lower incomes residents of ____ Section 3 also requires that contracts for work in connection with the Section 3 area be awarded to Section 3 eligible business concerns.

All proposals must be submitted in a sealed envelope and marked with the following language: “Proposal for CDBG Engineering Services.” Proposals will be evaluated on the following factors: Qualifications (40 points), Experience (40 points) and Capacity for Performance (20 points). To be evaluated properly, the following must be addressed in detail:

Qualifications – List of qualifications of persons to be assigned to project;

Experience – Information regarding the firm’s experience and the projects previously undertaken, including the type and amount of grants awarded, the projects activities, and the status of the projects;

Capacity for Performance – Identify the number and title of staff assigned to provide services.

The Town/City/County will designate a selection committee to evaluate each proposal. The selection committee may hold proposals for a period of not to exceed thirty (30) days for the purpose of reviewing the content of the proposals and investigating the qualifications of the firms and assigned individuals. The Town/City/County reserves the right to reject and and/or all proposals.

Subject to CDBG award(s) and the removal of all environmental conditions, the Town/City/County will award a contract with the qualified individual or firm whose proposal has the highest number of cumulative points issued by the selection committee and determined to be the most advantageous to the Town/City/County, price and other factors considered. The contract will include scope and extent of work and other essential requirements. An individual contract will be executed for each awarded project, and the contract will be on a fixed price basis. The Town/City/County has the authority to terminate the selection at any time.



NON-COMPETITIVE PROPOSALS - 2 CFR 200.320 (f)- The Non-Competitive Proposal method of procurement can be used only in very limited circumstances. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

1. The item is available only from a single source
2. After solicitation from a number of sources, competition is determined to be inadequate.
3. There is a public emergency and other procurement methods cannot be used.
4. When contracting with another unit of general local government or a planning and development district.

CONTRACT PRICING 2 CFR 200.323 (d)

The Sub-recipient must not use “cost plus a percentage of cost” pricing for contracts (2 CFR 200.323(d)). Cost-plus contracts are illegal and prohibited by HUD. Procurement contracts that allow payment of a set amount plus costs incurred over the set amount or required payment based on a percentage of the construction costs are considered cost-plus contracts

MINORITY- OWNED AND WOMEN - OWNED BUSINESS - 2 CFR 200.321(a)

Sub-recipients should make every effort to use local business firms and contract with small, minority-owned, and women-owned businesses (MBE/WBE) in the procurement process. Specifically, the grantee must take affirmative steps to assure that small, minority and female-owned businesses and labor surplus area firms have the opportunity to provide supplies, equipment, construction, professional services and other services. Affirmative steps include the following:

- Incorporation such businesses and maintain a solicitation list of qualified small, minority, and female owned businesses whenever there are potential sources.
- Ensure that small, minority and female owned businesses are solicited whenever they are potential sources.
- Where the requirement permits, establish delivery schedules that will encourage participation by small, minority and female owned business.
- Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises.

- Requiring prime contractors, when **subcontracts** are needed, to take affirmative steps to select such firms.
- Use the services and assistance of the Mississippi Development Authority Minority Business Division and the Mississippi Procurement Technical Center at www.mississippi.org.

SECTION 3 AND THE PROCUREMENT PROCESS

Section 3 requirements are required for HUD CDBG projects only. Section 3 is not applicable to ARC projects. Section 3 of the Housing and Urban Development Act of 1968, is a statutory provision which requires that, to the greatest extent feasible, opportunities for training, employment, contracting and other economic opportunities be given to low and very- low income residents of the project area and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part, by persons residing in the project area.

The Sub-recipient and contractors must demonstrate a good faith effort and document compliance as set-forth by 24 CFR 135 and CSD policy. Sub-Recipients of covered funding are deemed in compliance with Section 3 if the minimum numerical goals and submit all required reporting to CSD. Specifically:

- 30 percent of the aggregate number of new hires shall be Section 3 residents;
- 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

A Section 3 resident is:

- A Resident of Public and Indian Housing; or
- Individuals that reside in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits set forth for low- or very low-income households.

Section 3 Business Concerns are:

- Businesses that are 51 percent or more owned by Section 3 residents;
- Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
- Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

SECTION 3 BIDDING REQUIREMENTS

Section 3 encourages, “to the maximum extent feasible”, a preference for Section 3 Businesses in the evaluation of bids or proposals. However, Section 3 does not supersede the general requirement of 2 CFR 200 that all procurement transactions be conducted in a competitive manner. Geographic preference is generally not allowed for competitive bids, but Section 3 consideration may be included as an evaluation factor in procurements where price is not the sole determining factor or when a business will meet Section 3 hiring goals.

In an effort to promote the spirit and intent of the Section 3 requirements, the following bidding forms must be request and included in all bidding packages for federally funded projects. The Sub-recipients must include the applicability of Section 3 in all Request for Proposals, Request for Qualification and Invitation for Bids.

Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns

This information is designed to provide specific procedures that may be followed by recipients and contractors (collectively, referred to as the “contracting party”) for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 200.

(1) Small Purchase Procedures. For section 3 covered contracts aggregating no more than \$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(I) Solicitation.

(A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

- the section 3 covered contract to be awarded with sufficient specificity;
- the time within which quotations must be submitted; and
- the information that must be submitted with each quotation.

(B) If the method described in paragraph (i) (A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(II) Award.

(A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) Procurement by sealed bids (Invitations for Bids). Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:

(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid--

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than ``X" higher than the total bid price of the lowest responsive bid from any responsible bidder. ``X" is determined as follows:

x=lesser of:	
When the lowest responsive bid is less than \$100,000.	10% of that bid or \$9,000.
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000.	9% of that bid, or \$16,000.
At least \$200,000, but less than \$300,000.	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000.	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000.	6% of that bid, or \$25,000.
At least \$500,000, but less than million.	\$1 5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million.	4% of that bid, or \$60,000.
At least \$2 million, but less than \$4 million.	3% of that bid, or \$80,000.
At least \$4 million, but less than \$7 million.	2% of that bid, or \$105,000.
\$7 million or more.....	1\1/2\% of the lowest responsive bid, with no dollar limit

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2) (i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).

(i) For contracts and subcontracts awarded under the competitive proposals method of procurement (24 CFR 200), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.



(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concerns) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP

STATE AGENCY REVIEW - 2 CFR 200.324

- (a) The Sub-recipient must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the Sub-recipient desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The Sub-recipient must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
1. The Sub-recipient's procurement procedures or operation fails to comply with the procurement standards in this part;
 2. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 3. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 4. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- b. The Sub-recipient is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
 1. The Sub-recipient may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
 2. The Sub-recipient may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the Sub-recipient that it is complying with these standards. The Sub-recipient must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

CSD PROCUREMENT REVIEW

As outlined in 2 CFR 200.234, CSD will implement a review all professional services procurement at application and all construction procurement at a pre-construction phase for all CDBG and ARC grants.

PROFESSIONAL SERVICES PROCUREMENT REVIEW

All applications of CDBG and ARC that qualify for funding will be subject to an Administrative Services (if applicable) and Engineering Service procurement review. The review will consist of but not limited to the following procedures.

1. Proof of Publication
2. MBE/WBE Outreach
3. Section 3
4. Agency Bid Bank Acknowledgment

Where procurement activities for professional services will need to take place after funding, the Sub-recipient will forward the documents to CSD at the same time the RFP and/or RFQ is forwarded to the Agency Bid Bank for a review to procurementcsd@mississippi.org.

PRE-CONSTRUCTION PROCUREMENT REVIEW

All awarded CDBG and ARC grants will be subject to a pre-construction procurement review. The Sub-recipient will submit the information below for a review at the same time the information is submitted to the Agency Bid Bank. The review will consist of but not limited to the following review procedures.

1. Proof of Publication
2. MBE/WBE Outreach
3. Section 3
4. Agency Bid Bank Acknowledgment

Where procurement activities for professional services will need to take place after funding, the Sub-recipient will forward the documents to CSD at the same time the RFP and/or RFQ is forwarded to the Agency Bid Bank for a review to procurementcsd@mississippi.org.

BONDING REQUIREMENTS - 2 CFR 200.325

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the CSD may accept the bonding policy and requirements of the Sub-recipient provided that CSD has made a determination that the agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (1) A bid guarantee bond from each bidder equivalent to five percent of the bid price.** The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) A performance bond on the part of the contractor for 100 percent of the contract price.** A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (3) A payment bond on the part of the contractor for 100 percent of the contract price.** A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

CONTRACT PROVISIONS - 2 CFR 200.326

All contracts made by the Sub-recipient under the Federal award must contain provisions covering the following, as applicable.

(a) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the Sub-recipient including the manner by which it will be effected and the basis for settlement.

(c) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(d) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Sub-recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.

The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Sub-recipient must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Sub-recipient must report all suspected or reported violations to the Federal awarding agency.

(e) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the Sub-recipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(f) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub recipient 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 Sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(g) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(h) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(i) 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

REMEDIES FOR NON-COMPLIANCE - 2 CFR 200.338

If a Sub-recipient fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions. If the Federal awarding agency or pass-through entity determines that non-compliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- Temporarily withhold cash payments pending correction of the deficiency by the Sub-recipient entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
- Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- Wholly or partly suspend or terminate the Federal award.
- Initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
- Withhold further Federal awards for the project or program.
- Take other remedies that may be legally available.

THE “BID” PACKAGE

- The Invitation for Bids (IFB) packages for supplies, services, or construction are quite similar. The major difference is the length and complexity of the specifications or scope of work and the variety of attachments. All IFBs must be in writing. The basic documents to be included in an IFB package are:
- Cover Page with Table of Contents. (State the name, address and phone number of the person to contact for information regarding the solicitation.
- The project name and solicitation number and a table of contents for the complete solicitation package.
- Bid Form – This is the form on which bidders enter their bid or price(s). The form must be clear, accurate and unambiguous.
- Specification and Statement of Work. (Description of the work or items required).
- Instruction to Bidders
- Representations, Certifications, and other Statements for Bidders
- General Conditions of the Contract for Construction contracts, along with any appropriate
- Federal Labor Standards Guidance and Wage Decision for construction work.

TIME OF SOLICITATION

The solicitation must be run for a period sufficient to achieve effective competition, which, in the case of paid advertisements, should generally be run not less than once each week for two consecutive weeks.

AMENDMENTS

If a change to the IFB (e.g., specification, plans, date or time of bid opening, etc.) becomes necessary after it has been issued, the change must be accomplished by issuing a written amendment, sometimes called an addendum. The amendment must indicate the IFB number, project title, issue date of the original IFB and formally detail each change. Each amendment must be noted on the Sub-recipient solicitation log. A copy of the amendment should be mailed to each prospective bidder who was provided the initial bid package with acknowledgment required. If an amendment needs to be issued just before the scheduled bid opening date, the bid opening should be postponed for an adequate period of time to permit the potential bidders to fully analyze the change and to submit timely bids.

CANCELING AN IFB

The Sub-recipient may cancel IFBs when necessary or when otherwise considered to be in the best interest of the sub recipient. A common reason for cancelling an IFB is that the low bid significantly exceeds the Sub-recipient budget or when the scope of work or specifications are found to be ambiguous or flawed. Cancellations must be done in accordance with the Sub-recipient's written procurement policy and procedures. While it is not prohibited, the repeated cancellation of a single IFB or multiple IFBs only serve to create a lack of confidence in the Sub-recipient bidding process. Such actions may create the appearance that either the sub-recipient does not really know what it wants or the Sub-recipient may be seeking a particular bidder or bidders. The designated procurement official shall document the procurement file with the reasons and supporting facts for canceling the IFB.

TIME AND PLACE CERTAINTY

The bid opening process must be handled professional and ethically. Each bid must be dated and timed stamped immediately upon receipt by the Sub-recipient. Sealed bids should be stored in a locked bid box, cabinet or safe to ensure that they are not opened or mishandled prior to the bid opening. A Sub-recipient's staff person or Contracted Administrator should stand by just before the deadline to see that bids received at the proper location are date and time stamped immediately logged in with the time/date of receipt and name of bidder. Sealed bids received after the time specified in the IFB should be recorded as a late bid and kept unopened in the contract file.

PUBLIC BID OPENING PROCESS

To ensure fairness in the award process, anyone is permitted to attend the bid opening. Sealed Bids shall not be opened no less than fifteen (15) working days after the last notice is published. Bids shall be publicly opened on the scheduled date and time shown in the solicitation. The bid opening official reads aloud the bidder's names and the bid prices. This information is recorded and may be made available for public inspection. No commitment or statement regarding contract award should be made to any bidder at the bid opening. All bids will be listed and documented on a bid tabulation sheet.

RECORDING OF BIDS

As bids are publicly opened and read aloud, a tabulation of all bids is prepared showing the name of each bidder and their bid prices including alternates, if any. The tabulation sheet becomes part of the official contract file.

GENERAL PROCEDURES

Correction or withdrawal bids requires careful consideration. The integrity of the competitive bidding system must be maintained, fairness ensured and delays avoided. While bidders must be bound by their bids, circumstances may arise where correction or withdrawal of bids is proper and may be permitted.

MISTAKES BEFORE BID OPENING

Unless otherwise prohibited by State or local law, bidders shall be permitted to withdraw or modify their bids by written letter notice prior to bid opening.

REVIEW OF BIDS FOR MISTAKES

After the bid opening the designated procurement officer should carefully review all bids to ensure that the bidders have not made any obvious mistakes in their bids. For example, the sum of individual bid line items does not equal the total bid price. An item by item recalculation of the bid cost will often reveal the miscalculation or error. If a bidder appears to have made a mistake, the procurement officer should immediately notify a bidder of any apparent mistake in his/her bid and request verification of the bid as submitted. If the bidder is not present at bid opening or if the procurement officer performs the bid review after opening takes place, the procurement officer should notify the bidder by phone. The sub-recipient is strongly advised to confirm phone notifications with a follow up letter containing the information communicated by phone. The procurement officer should place a copy of the letter or otherwise document the procurement file.

MISTAKES AFTER BID OPENING

In general, bidders should not be permitted to change a bid after bid opening. In rare cases, the procurement officer may permit the revision of a bid if the bidders are able to present clear and convincing evidence acceptable to the contracting officer, of a mistake and the intended bid price. Allowing changes to bids without appropriate evidence may compromise the integrity of the public bid process and serve to undermine public confidence in the Sub-recipient bidding process. Therefore, the procurement officer should request as much evidence as he or she deems necessary. Examples of evidence may include: original work papers, bids from suppliers and subcontractors used to develop the bid, bonding or insurance evidence supporting a different bid price, etc. Failure or refusal by a bidder to provide adequate evidence shall result in the original bid remaining unchanged. The Sub-recipient should consult with their legal counsel before allowing a change in bid. If justified, a low bidder can be replaced with the next lowest bidder.

WITHDRAWAL OF BIDS

Withdrawal of a bid is permissible if there is an obvious error in the bid such as a math error, but the mistake must be readily apparent from the bid itself. A bidder may be permitted to withdraw a low bid if a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident. A bidder may also be permitted to withdraw a low bid if the bidder submits written evidence that clearly and convincingly demonstrates that a mistake was made. The Sub-recipient should require written supporting evidence before allowing withdrawal by the bidder. If the local unit of government allows withdrawal, the bid bond should be returned to the bidder upon verification of the error. In cases of alleged mistakes or requests for withdrawal, the decision to allow a correction or withdrawal should only be made after consultation with the Sub-recipient legal counsel.

DETERMINING RESPONSIVENESS AND CONTRACTOR RESPONSIBILITY

The next step in the contract award process is to review the low bid for responsiveness. To be considered responsive, a bid must conform to the material requirements of the IFB. The procurement officer must examine the low bid to be sure that the bidder did not alter the specifications or other terms and conditions (delivery schedules, payments terms, etc.) or attempt to impose different terms and conditions. If the bid does not conform to the solicitation, it must be rejected and the next lowest bid examined for responsiveness. Allowing a bidder to alter the material requirements of a solicitation gives the bidder an unfair advantage over the other bidders and destroys the integrity of the sealed bidding process. It also limits the sub-recipient's rights in the contract. The procurement officer shall document his/her findings regarding the low bidder's responsiveness in the procurement file. Minor informalities are not grounds for determining a bid to be nonresponsive. After determining the responsiveness of the low bid, the procurement officer shall determine if the bidder is responsible

**COMMUNITY SERVICES DIVISION STATE GRANT AWARDS
STATE PROCUREMENT PROCESS**

For all state grant awards (ONLY) the Sub-recipient will follow the State of Mississippi purchasing law guidelines and utilize their own procurement process to secure **all** professional services contracts and construction contracts related to a State Grant award. Where federal funds are utilized in whole or in part, the federal procurement guidelines within this manual must be followed.

BIDDING PROCEDURE FOR PURCHASES NOT OVER \$5,000.00

Purchases which do not involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids. However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars (\$5,000.00) or less. (No Competitive Bids Required_

**BIDDING PROCEDURE FOR PURCHASES OVER \$5,000.00
BUT NOT OVER \$50,000.00**

Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Best Bids must be documented per MS Statute Sec. 31-7-13 (d)

**BIDDING PROCEDURE FOR PURCHASES OVER \$50,000.00
PUBLICATION REQUIREMENT**

- Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located.
- The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks.

- If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner.
- On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program (now the agency bid bank) under the Mississippi Development Authority that contains the same information as that in the published notice..

BIDDING PROCESS AMENDMENT PROCEDURE

If all plans and/or specification are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments.

This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specification may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

FILING REQUIREMENT

In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

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Procurement
Regulations**

HP LaserJet 400 M401dne

HP Web Services

Enable HP Web Services

NOTE: HP Web Services requires the printer to be connected to a network.

1. Once the printer is connected to a network, enter the printer's network IP address into a Web browser. To find the printer's IP address, refer to the printer's user guide, or reprint this page after the printer is connected to the network.
2. On the Web page that appears, click on the HP Web Services tab.
3. Review and accept the terms of use, and then click the Enable button.

HP ePrint

Print from Anywhere

HP's free ePrint service provides an easy way to print from e-mail, anywhere and anytime. Simply attach a file to an e-mail, and send it to this printer's e-mail address. The attachment will print automatically on this printer. Supported attachment file types include .pdf, .jpg, .tif, and Microsoft Office(R) documents.

NOTE: Attachments may print differently than they appear in the software program which created them, depending on the original fonts and layout options used.

Your Printer is Protected

To help prevent unauthorized e-mail, HP assigns a random e-mail address to your printer, never publicizes this address, and by default does not respond to any sender. ePrint also provides industry-standard spam filtering and transforms e-mail and attachments to a print-only format to reduce the threat of a virus or other harmful content.

NOTE: The ePrint service does not filter e-mails based on content, so it cannot prevent objectionable or copyrighted material from being printed.

HP ePrintCenter

Use the HP ePrintCenter Web Site

Use HP's free ePrintCenter Web site to set up increased security for ePrint, specify the e-mail addresses that are allowed to send e-mail to your printer, get Print Apps (if available for your product), and access other free services.

- Go to the HP ePrintCenter Web site for more information and specific terms and conditions:
www.hpePrintCenter.com

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Awards, Contracts and Cooperative Agreements.”

(d) The Federal government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e) Freedom of Information Act (FOIA).

(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(1) Research findings are published in a peer-reviewed scientific or technical journal; or

(1) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. “Used by the Federal government in developing an agency action that has the force and effect of law” is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary anal-

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yses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(1) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(1) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions.

§ 200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is un-

able or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local inter-governmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is 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.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor

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selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(1) The actual cost of materials; and
(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. 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 local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of

work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and

standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). 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. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) 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.

(2) If sealed bids are used, the following requirements apply:

(i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an

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offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified 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) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§ 200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition,

OMB Guidance

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where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.323 Contract cost and price.

(a) 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. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the

Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be

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reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract

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to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

§ 200.327 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

200.328 Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.331 Requirements for pass-through entities.

(b) *Non-construction performance reports.* The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance

progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The Federal awarding agency may make site visits as warranted by program needs.

(f) The Federal awarding agency may waive any performance report required by this part if not needed.

§ 200.329 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g.,

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every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

SUBRECIPIENT MONITORING AND MANAGEMENT

§200.330 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use

and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§200.331 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal Award Identification.
 - (i) Subrecipient name (which must match registered name in DUNS);
 - (ii) Subrecipient's DUNS number (see §200.32 Data Universal Numbering System (DUNS) number);
 - (iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see §200.39 Federal award date);

(v) Subaward Period of Performance Start and End Date;

(vi) Amount of Federal Funds Obligated by this action;

(vii) Total Amount of Federal Funds Obligated to the subrecipient;

(viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (b) of this part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this section, §§200.300 Statutory and national policy requirements

through 200.309 Period of performance, and Subpart F—Audit Requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraph (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and programmatic reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient

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from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.

§ 200.332 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

RECORD RETENTION AND ACCESS

§ 200.333 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertain-

ent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer

usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 200.334 Requests for transfer of records.

The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 200.335 Methods for collection, transmission and storage of information.

In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, the Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there

is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 200.336 Access to records.

(a) *Records of non-Federal entities.* The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) *Expiration of right of access.* The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 200.337 Restrictions on public access to records.

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the

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records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 200.315 Intangible property. Unless required by Federal, state, or local statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

REMEDIES FOR NONCOMPLIANCE

§ 200.338 Remedies for noncompliance.

If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency

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regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

§ 200.339 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By the Federal awarding agency or pass-through entity for cause;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety.

(b) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.343 Closeout and 200.344 Post-closeout adjustments and continuing responsibilities.

§ 200.340 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide to the