



**CITY OF MERCED
INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING**

This Interdepartmental Memorandum of Understanding ("IMOU") between the City of Merced Engineering Department ("Engineering") and the City of Merced Housing Division ("Housing") is entered into this _____ day of _____, 20__.

WHEREAS, through the 2022 Annual Action Plan ("Annual Plan") submitted to and approved by the United States Department of Housing and Urban Development (HUD), the City Council wishes to carry out public facility improvement projects aimed at improving the quality of life for Merced City residents; and,

WHEREAS, Housing, under its general responsibilities of administering such funding, has applied for and received funds from HUD under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-833, under the Community Development Block Grant Program, 14.218-Entitlement Grant No. B-22-MC-06-0044 ("CDBG"), and administered by HUD, with a Federal Award date of November 13, 2022; and,

WHEREAS, Housing wishes to engage one or more City of Merced Departments and/or Divisions to enlist assistance, using available staff, processes, skills, and resources, as necessary, in utilizing such funds towards Public Facility Improvement projects that will meet the CDBG National Objective to benefit primarily low- to moderate-income residents in certain designated Income Eligible Census Tracts within the City Limits; and,

WHEREAS, Engineering possesses the experienced staff, processes, skills, and resources necessary to accomplish the public infrastructure goals of the City using CDBG funds; and,

WHEREAS, Housing has ensured, through completion of an environmental review, that the subject project will meet compliance with the National Environmental Policy Act (NEPA) and related Federal laws and authorities.

NOW, THEREFORE, this IMOU is made and entered upon the following terms and conditions:

1. **Scope of Services.** Engineering will be responsible for administering CDBG public facility improvement project funding using the below-stated Program Year 2022-23 CDBG funds in a manner satisfactory to Housing and consistent with any standards required as a condition of providing these funds. Engineering will design and oversee construction, including any necessary coordination with other City Departments, of new ADA-compliant ramps, landings, walkways, and other necessary improvements needed to improve disabled accessibility from existing sidewalks along the City rights-of-way to designated playground equipment areas within existing South Merced neighborhood park facilities.

The first three of the five neighborhood parks listed below shall be designed/constructed as a matter of priority (Priority 1, as shown), as determined by distance and safety considerations related to the nearest ADA accessible Community Park facility (McNamara), anticipated

scope of work needed, and the amount of available funds for the project. Thereafter, the remaining two park locations shall be addressed in the order listed and/or as remaining funds allow (Priority 2, as shown):

- a. Frederick Douglass Park; V and W. 8th Streets (Priority 1)
- b. Little Angels Park; H and E. 11th Streets (Priority 1)
- c. 12th and G Street Park; E. 12th Street, between E and G Streets (Priority 1)
- d. Love Veasley Family Park; Canal and W. 6th Streets (Priority 2)
- e. Benjamin Tanager Park; T and W. 3rd Streets (Priority 2)

2. **Time of Performance.** Engineering is expected to draw down all budgeted CDBG funds and fully complete improvement activities by June 30, 2024. This time shall be extended to cover the additional time needed to obtain any necessary Certificates of Completion or other necessary project close out actions.
3. **Budget and Use of Funds.** The total amount to be reimbursed to Engineering by CDBG funds under this IMOU shall not exceed \$102,432.00, as per the Engineer's Project Cost Estimate (Exhibit 1), adjusted as follows:

<u>Item:</u>	<u>Expected Cost:</u>
1. Permits, Bonds, and Licenses	\$ 15,000.00
2. Public Convenience and Safety	5,000.00
3. Surveying Services	2,000.00
4. Monumentation	600.00
5. Clearing and Grubbing	7,500.00
6. Remove Concrete Curb	1,680.00
7. Remove Existing Concrete Sidewalk	1,325.00
8. Concrete Sidewalk and Access Ramp	42,840.00
9. Restoration (Irrigation, etc.)	6,000.00
Total Items 1-9: Project Costs:	\$ 81,945.00
Contingency, Engineering, Testing (~25%):	20,487.00
Total Project Budget:	<u>\$ 102,432.00</u>

Payment will be made only for the cost of constructing the above-described improvements and direct costs for advertising, printing, and other necessary costs to bid the project. Administrative and Activity Delivery Costs, including staff hours billed for design of civil engineered drawings, will be eligible for reimbursement based upon actual time submitted.

An additional \$5,000, or a maximum of 5% of the total actual Engineering project costs, shall be retained by Housing for its own Activity Delivery Costs (ADC), as allowed by HUD and approved in the Annual Plan.

The total combined Housing and Engineering expenses for this project shall not exceed \$107,432.00.

4. **Amount and Timing of Available Funding.** Following execution of this IMOU, CDBG funds in the initial amount of \$88,000 for this project are immediately available for invoicing and drawdown towards the Total Project Budget and Housing ADC costs listed and discussed

above, as was approved in the 2022 Annual Action Plan [Project 6: PFI – CDBG: Neighborhood Park ADA Improvements (22/23)].

Due to an increase in the expected cost to complete the Scope of Work involved in this project, additional funds are required. To this end, additional PY2022 CDBG funds in the amount of \$19,432.00 will become available following completion of a Technical Amendment to the 2022 Annual Action Plan by Housing.

Amount and timing of funding to be provided by Housing is summarized below:

1. Upon initial Execution of (available now):	\$88,000.00
2. Following Technical Amendment (approx. Dec. 2023):	<u>19,432.00</u>
Total Project Funding to be provided by Completion Date:	\$ 107,432.00

5. **Goals.** The goal of this project is to eliminate architectural and landscape-related barriers that may currently prohibit physically disabled people from being able to participate in the use of each park's playground equipment. Additionally, this project will meet HUD's goals regarding the use of CDBG funds, in that it will meet a clear CDBG National Objective by providing a benefit for people who primarily reside in a Low- and Moderate-income Area (LMA), specifically the project area shown in Exhibit 2, located in HUD Income Eligible Census Tracts 15.03 and 16.01.
6. **Grant Compliance.** Engineering agrees to comply with the requirements of Title 24 of the Code of Federal Regulations (CFR) Part 570 (the regulations concerning CDBG funds). Engineering also agrees to comply with all other applicable federal, state, and local laws, regulations, and policies governing the funds provided under this IMOU.
7. **Procurement.** Engineering will procure construction contract(s) and any services in a manner consistent with the Federal General Procurement Standards at 2 CFR 200.318-327, as required by the City's own Federal Grant Procurement Guidelines and the most current version of its Procurement Manual. This will include, but not be limited to, the following steps:
 - a. *Bidding.* Obtain the current labor standards package, including federal wage determination, from Engineering for inclusion in the bid package. Release and advertise an Invitation for Bid or equivalent to solicit sealed bids. Update the federal wage determination 10 days prior to opening.
 - b. *Contractor selection.* After bids have been opened, provide a complete list of bidders to Engineering. Include a copy of the submission from the lowest responsive and responsible bidder. Engineering will check the contractor's and subcontractors' license and federal debarment status and inform Housing of the contractor's eligibility to enter into an agreement with Engineering.
 - c. *Contracting.* Provide Housing with a copy of the executed contract.
8. **Build America Buy America Act (BABA) Compliance.** Engineering shall ensure that BABA (Buy America) Requirements applicable to steel and iron, manufactured projects, and

construction materials used in the project are incorporated into the Contractor Contract and are being followed during the construction of the project.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to infrastructure projects. It does not apply to tools, construction equipment, and supplies, used in performing the work, nor does it apply to equipment and furnishings that are used at or within the finished infrastructure project, but are not an integral part of or permanently affixed to the project.

BABA waivers

Engineering shall waive the application of the domestic content procurement preference, require and retain documentation of such waiver, and ensure that appropriate language is included in the Contractor Contract if a Buy America waiver is issued by a Federal Agency for any of the following exceptions:

- a. If applying the domestic content procurement preference would be inconsistent with the public interest
- b. If the type(s) of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities, or of a satisfactory quality
- c. If the inclusion of iron, steel, manufactured products, or construction materials produced in the United States would increase the cost of the overall project by more than 25 percent

9. **Labor Standards.** Engineering shall ensure the contractor is complying with all Federal labor standards, including but not limited to:

- a. Davis-Bacon Act. Engineering agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, State and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this IMOU. Engineering agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Engineering shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Housing for review upon request.
- b. "Section 3" Clause. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 75, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City of Merced Housing Department, the City of Merced Engineering Department and any of the subcontractors. Failure to fulfill these requirements shall subject the City of Merced, and subcontractors, their successors and assigns, to those sanctions specified by the IMOU through which Federal assistance is provided. Engineering certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Engineering further agrees to comply with these "Section 3" requirements and to include the following language in all contracts executed for this project:

"The work to be performed under this IMOU is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of 24 CFR Part 75. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

Engineering certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

10. Construction Management. Engineering shall provide the following information throughout the course of the project:

- a. Date, time, and location of the pre-construction conference. This should be held at a time when a representative of Housing is able to attend.
- b. 10-day labor standards compliance documents.
- c. A sufficient schedule of work to take place sufficient so that Housing is able to determine when required employee interviews should be conducted, and updated schedules as needed.
- d. Copies of any payrolls or other labor standards compliance documentation, if not submitted directly to Housing.
- e. Copies of all change orders.

If the labor standards compliance information is not complete and correct through the date of any payment request, that payment request may not be paid until proper information is submitted.

11. Payment Requests. Engineering shall submit all payment requests for the project to Housing for payment, with certification that the percentage of work completed is in line with the payment request. After Housing approval, payments will be forwarded to the Finance Department for processing. Payment requests for construction work should contain:

- a. Original invoice(s) from the contractor.
- b. Approving signature by the City Engineer or authorized designee, indicating that all charges have been reviewed and found to be consistent with the contract, all regulatory standards, and other applicable rules for disbursement.

- c. W-9 (Request for Taxpayer Identification and Number and Certification) for the vendor.

Payment requests for direct costs associated with implementing the project, such as printing or advertising costs, should be submitted to Housing with an original copy of the invoice and applicable back-up documentation.

12. **Property Management.** The subject improvements are considered a public facility improvement. Engineering will comply with all applicable federal policies regarding real property and property improvements, including the following:

- a. Maintain the property in good condition.
- b. Keep adequate property records. All records must be retained for five years after final disposition of property.
- c. Ensure that the property is covered by the City's insurance in case of loss or damage.
- d. The property must be available for public use. In the event that the property is no longer open to the public, Engineering will contact Housing to determine if repayment of any CDBG funds is required.

13. **Environmental Compliance.** Engineering, through its project management including design, procurement process, and Contractor services, and Housing, through its management and oversight of Federal grants, shall both ensure that any Mitigation Measures required through the NEPA environmental review are followed and completed throughout the duration of the project, including post-completion.

14. **Contacts.** The primary contact for the Development Services Department will be the Director (or an authorized alternate designee), primary contact for Engineering will be the City Engineer (or an authorized alternate designee), and the primary contact for Housing will be the Housing Program Supervisor.

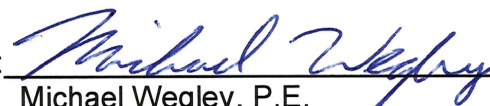
The undersigned contacts have reviewed and understood the foregoing and will ensure compliance by their respective departments.

City of Merced Housing Division:

By: 
Kimberly Nutt
Housing Program Supervisor

Date: 11/1/23

City of Merced Engineering Department:

By: 
Michael Wegley, P.E.
Interim City Engineer

Date: 11/14/23

City of Merced Development Services Department:

By: 
Scott McBride
Director of Development Services

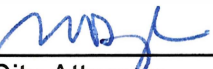
Date: 11/14/23

APPROVED:


City Manager



REVIEWED LEGAL PROVISIONS:

By:  10/31/23
City Attorney

Date: _____

ACCOUNT DATA:

By: _____
Verified by Finance Officer

EXHIBIT 1
ENGINEER'S PROJECT COST ESTIMATE

PROJECT CP240046 - CDBG MINI PARK ADA IMPROVEMENTS

Itemized Schedule for 5 Mini Parks (Benjamin Tanager, The Love Veasley,
Frederick Douglass, Little Angels, 12th & G)

NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	Engineer's Probable Cost	
				UNIT PRICE	ITEM TOTAL
1	Permits, Bonds & Licenses	LS	1	\$ 15,000.00	\$ 15,000.00
2	Public Convenience and Safety	LS	1	\$ 5,000.00	\$ 5,000.00
3	Surveying Services	LS	1	\$ 2,000.00	\$ 2,000.00
4	Monumentation	LS	1	\$ 600.00	\$ 600.00
5	Clearing and Grubbing	LS	1	\$ 7,500.00	\$ 7,500.00
6	Remove Concrete Curb	LF	30	\$ 56.00	\$ 1,680.00
7	Remove Existing Concrete Sidewalk	SF	53	\$ 25.00	\$ 1,325.00
8	Concrete Sidewalk and Access Ramp	SF	2,142	\$ 20.00	\$ 42,840.00
9	Restoration (Irrigation etc...)	LS	1	\$ 6,000.00	\$ 6,000.00
Total Bid Items 1 Through 9:					\$ 81,945.00
				Contingency, Engr, Testing (25%)	\$ 20,486.25

Total **\$ 102,431.25**

EXHIBIT 2
PARK SITES - CENSUS TRACTS 15.03 and 16.01

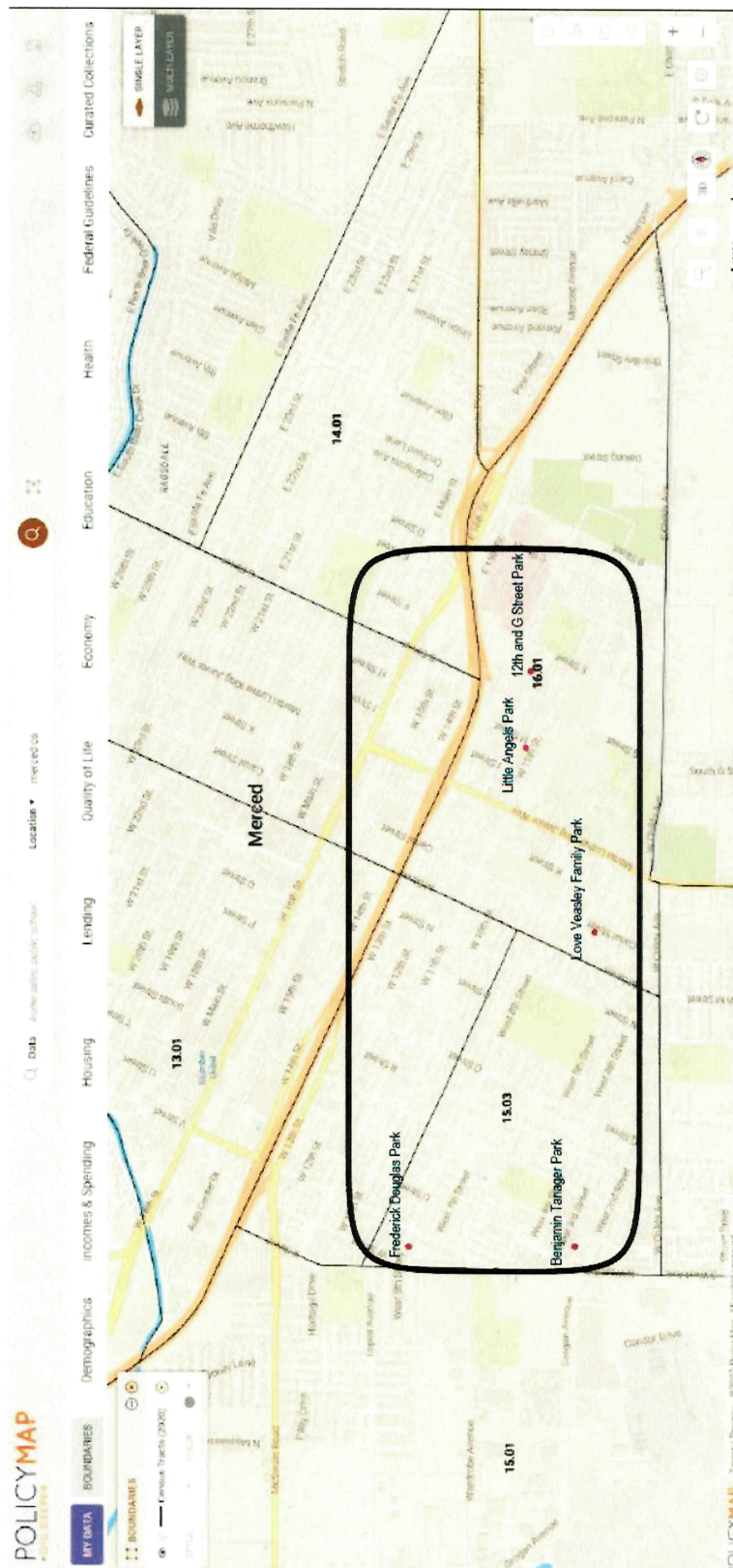


EXHIBIT 3 - FEDERAL GRANT PROCUREMENT GUIDELINES

2 CFR Part 200 Subpart D (up to date as of 10/27/2023)
Procurement Standards

2 CFR Part 200 Subpart D (Oct. 27, 2023)

This content is from the eCFR and is authoritative but unofficial.

Title 2 —Grants and Agreements

Subtitle A —Office of Management and Budget Guidance for Grants and Agreements

Chapter II —Office of Management and Budget Guidance

Part 200 —Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Subpart D —Post Federal Award Requirements

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

Authority: 31 U.S.C. 503

Source: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

Procurement Standards

- § 200.317 Procurements by states.
- § 200.318 General procurement standards.
- § 200.319 Competition.
- § 200.320 Methods of procurement to be followed.
- § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- § 200.322 Domestic preferences for procurements.
- § 200.323 Procurement of recovered materials.
- § 200.324 Contract cost and price.
- § 200.325 Federal awarding agency or pass-through entity review.
- § 200.326 Bonding requirements.
- § 200.327 Contract provisions.

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 §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

- (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 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 non-Federal entity may 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 unable 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 intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
- (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. See also § 200.214.

- (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 selection or rejection, and the basis for the contract price.
- (j)
 - (1) The non-Federal entity 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 non-Federal entity 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 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.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

§ 200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
- (b) 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. 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.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except 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.
- (d) 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.
- (e) 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.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
 - (1) **Micro-purchases** —

- (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
 - (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
 - (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
 - (iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
 - (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
 - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - (C) For public institutions, a higher threshold consistent with State law.
 - (v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- (2) **Small purchases —**
- (i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

- (ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:
 - (1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.
 - (i) In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) 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.
 - (ii) If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of qualified sources, 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 publicly advertised;
 - (B) 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;
 - (C) 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;
 - (D) 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
 - (E) Any or all bids may be rejected if there is a sound documented reason.
 - (2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
 - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror 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 that are a potential source to perform the proposed effort.
- (c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) 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 (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- (c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

[85 FR 49543, Aug. 13, 2020, as amended at 88 FR 57790, Aug. 23, 2023]

§ 200.323 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, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; 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.

§ 200.324 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 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.

§ 200.325 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 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.

§ 200.326 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 requirements 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 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.

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.