

## ROUNDTABLE DISCUSSION PROCURMENT STANDARDS

Part 200 Uniform Administrative Requirements

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- **What is procurement?** – The means by which federal, state or local governments get the “best bang for the buck” in the purchase of goods and services. The basic tenet in procurement is ensuring open competition, or “casting a wide net” in the solicitations for goods and services.
- **Two types of procurement** – (1) Cost-based procurement where the cost of the goods and services is the primary consideration in selecting a provider where the lowest cost responsive and responsible bidder is chosen.
  - **Responsive** = Vendor has complied with all the terms and conditions in the solicitation
  - **Responsible** = Vendor has a good track record of providing goods and services to others, e.g. has not been debarred for failure to perform, has good references, does not have recent or pending litigation regarding fraud or breach of contract in the provision of goods and services.

(2) Qualifications based procurement where the qualifications of the vendor are the primary consideration rather than cost, e.g. architects, engineers, environmental services. Cost for architects are negotiated after the most qualified firm is selected.

- **Approaches to procurement** – Prequalified lists of vendors for goods or services where after the solicitation, a group of vendors is established and quotes are requested from within the group. Lead abatement firms for example.

### §200.319 COMPETITION.

#### 1. Procurement transactions must provide full and open competition:

- Statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals is prohibited. (Except where Federal statutes expressly mandate or encourage geographic preference or when contracting for architectural/engineering (A/E) services.)
- Contractors that develop or draft specifications, requirements, statements of work, or requests for proposals must be excluded from competing for such procurements to eliminate unfair competitive advantage.
- 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.
- Potential bidders may not be precluded from qualifying during the solicitation period.
- Some situations considered to be restrictive of competition:
  - a) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - b) Requiring unnecessary experience and excessive bonding;
  - c) Noncompetitive pricing practices between firms or between affiliated companies;
  - d) Noncompetitive contracts to consultants that are on retainer contracts;
  - e) Organizational conflicts of interest;
  - f) 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;
  - g) Any arbitrary action in the procurement process.

#### 2. Written procurement procedures must be in place. These procedures must ensure that all solicitations:

- Incorporate a clear description of the technical requirements for the material, product, or service without creating features that unduly restrict competition.
- Avoid detailed product specifications if at all possible. A “brand name or equivalent” description may be used as a means to define the specifications but specific features of the named brand must be clearly stated.
- Identify all requirements that must fulfill and all other factors to be used in evaluating bids or proposals.

### §200.320 METHODS OF PROCUREMENT TO BE FOLLOWED.

#### 1. Procurement by micro-purchases:

- Acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold currently established at \$3,000 but may be periodically adjusted for inflation.
- To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers.
- May be awarded without soliciting competitive quotations if the price is considered to be reasonable.

#### 2. Procurement by small purchase procedures:

- Simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold currently established at \$150,000.

- If used, price or rate quotations must be obtained from an adequate number of qualified sources.
3. 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 conforms to all terms and conditions and is the lowest in price.
    - The preferred method for procuring construction, when the following conditions are 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.
    - If sealed bids are used, the following requirements apply:
      - a) Bids must be solicited from an adequate number of known suppliers and provide sufficient response time prior to the bid opening date. Local and tribal governments must publicly advertise the invitation to bid;
      - b) The invitation for bids including any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
      - c) All bids are publically opened at the time and place prescribed in the invitation for bids;
      - d) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder;
      - e) Any or all bids may be rejected if there is a sound documented reason.
  4. Procurement by competitive proposals:
    - The technique normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded; generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
      - a) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to requests for proposals must be considered to the maximum extent practical;
      - b) Proposals must be solicited from an adequate number of qualified sources;
      - c) There must be a written method for conducting technical evaluations and for selecting recipients;
      - d) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
      - e) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of 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.
  5. Procurement by noncompetitive proposals:
    - Solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
      - a) The item is available only from a single source;
      - b) Public exigency or emergency will not permit a delay resulting from competitive solicitation;
      - c) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
      - d) 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.**

1. All necessary affirmative steps must be taken to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
  - Affirmative steps must include:
    - a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    - c) 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;
    - d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
    - e) 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
    - f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.