

County Council Of Howard County, Maryland

2019 Legislative Session

Legislative Day No. 1


Resolution No. 1-2019

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION pursuant to Section 4.104 of the Howard County Code, amending the Purchasing Manual in order to incorporate certain requirements related to Federal grant funded purchases; and generally relating to the Howard County Purchasing Manual.

Introduced and read first time January 7, 2019.

By order


Jessica Feldmark, Administrator

Read for a second time at a public hearing on January 22, 2019.

By order


Jessica Feldmark, Administrator

This Resolution was read the third time and was Adopted , Adopted with amendments , Failed , Withdrawn , by the County Council on February 4, 2019.

Certified By


Jessica Feldmark, Administrator

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, the Federal government has issued standards governing the use of Federal
2 grants by state and local jurisdictions when making purchases using those funds; and

3
4 **WHEREAS**, these standards are known as the 2 CFR 200 Uniform Guidance
5 Procurement Standards and were promulgated on December 26, 2014 and required to be
6 effective for State and local governments on July 1, 2018; and

7
8 **WHEREAS**, to be in compliance with the new standards, the County needs to amend its
9 Purchasing Manual by adding a new section setting forth the standards which are to be followed
10 when making purchases using Federal grant funds; and

11
12 **WHEREAS**, the County's Purchasing Manual sets forth the operating procedures for the
13 County's procurement process; and

14
15 **WHEREAS**, amendments to the Purchasing Manual are needed to incorporate the new 2
16 CFR 200 Uniform Guidance Procurement Standards.

17
18 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
19 Maryland this ___ day of _____, 2019, that Section V, Appendix I and Appendix II are
20 added to the Purchasing Manual, substantially in the form attached to this Resolution.

21
22 **AND BE IT FURTHER RESOLVED**, that the Purchasing Manual's Table of Contents
23 shall be amended by adding reference to Section V, Appendix I and Appendix II and the relevant
24 page numbers.

25
26 **AND BE IT FURTHER RESOLVED**, that the County Purchasing Agent may correct
27 obvious errors, capitalization, spelling, grammar, headings and similar matters and may publish
28 the Purchasing Manual by adding or amending covers, title pages, table of contents, and graphics
29 to improve readability.

1 **SECTION V FEDERAL GRANT FUNDED PURCHASES**

2 **(REFERENCE CODE SEC. 4.118)**

3 **WHEN USED:** TO PURCHASE GOODS OR SERVICES USING FEDERAL FUNDS. SUCH PURCHASES ARE
4 REQUIRED TO MEET THE UNIFORM GUIDANCE PROCUREMENT STANDARDS AS SET FORTH IN
5 APPENDIX I AND APPENDIX II OF THIS SECTION.

6
7
8 **APPENDIX I**

9 **FULL TEXT FOR UNIFORM GUIDANCE PROCUREMENT STANDARDS:**

10 **§200.317 PROCUREMENTS BY STATES AND OTHER NON-FEDERAL ENTITIES**

11 WHEN PROCURING PROPERTY AND SERVICES UNDER A FEDERAL AWARD, A NON-FEDERAL
12 ENTITY MUST USE ITS OWN DOCUMENTED PROCUREMENT PROCEDURES PROVIDING THEY
13 CONFORM TO STATE AND LOCAL LAWS AND REGULATIONS **AND** THEY ARE EXPECTED TO
14 CONFORM TO THE GUIDANCE IN 200.318-326. ALL OTHER NON-FEDERAL ENTITIES, INCLUDING
15 SUBRECIPIENTS OF A STATE, WILL FOLLOW §§200.318 GENERAL PROCUREMENT STANDARDS
16 THROUGH 200.326 CONTRACT PROVISIONS.

17
18 **§200.318 GENERAL PROCUREMENT STANDARDS**

19 (A) THE NON-FEDERAL ENTITY MUST USE ITS OWN DOCUMENTED PROCUREMENT PROCEDURES
20 WHICH REFLECT APPLICABLE STATE, LOCAL, AND TRIBAL LAWS AND REGULATIONS, PROVIDED
21 THAT THE PROCUREMENTS CONFORM TO APPLICABLE FEDERAL LAW AND THE STANDARDS
22 IDENTIFIED IN THIS PART.

23 (B) NON-FEDERAL ENTITIES MUST MAINTAIN OVERSIGHT TO ENSURE THAT CONTRACTORS
24 PERFORM IN ACCORDANCE WITH THE TERMS, CONDITIONS, AND SPECIFICATIONS OF THEIR
25 CONTRACTS OR PURCHASE ORDERS.

26 (C)(1) THE NON-FEDERAL ENTITY MUST MAINTAIN WRITTEN STANDARDS OF CONDUCT
27 COVERING CONFLICTS OF INTEREST AND GOVERNING THE ACTIONS OF ITS EMPLOYEES
28 ENGAGED IN THE SELECTION, AWARD AND ADMINISTRATION OF CONTRACTS. NO EMPLOYEE,
29 OFFICER, OR AGENT MAY PARTICIPATE IN THE SELECTION, AWARD, OR ADMINISTRATION OF A
30 CONTRACT SUPPORTED BY A FEDERAL AWARD IF HE OR SHE HAS A REAL OR APPARENT
31 CONFLICT OF INTEREST. SUCH A CONFLICT OF INTEREST WOULD ARISE WHEN THE EMPLOYEE,
32 OFFICER, OR AGENT, ANY MEMBER OF HIS OR HER IMMEDIATE FAMILY, HIS OR HER PARTNER,

1 OR AN ORGANIZATION WHICH EMPLOYS OR IS ABOUT TO EMPLOY ANY OF THE PARTIES
2 INDICATED HEREIN, HAS A FINANCIAL OR OTHER INTEREST IN OR A TANGIBLE PERSONAL
3 BENEFIT FROM A FIRM CONSIDERED FOR A CONTRACT. THE OFFICERS, EMPLOYEES, AND
4 AGENTS OF THE NON-FEDERAL ENTITY MAY NEITHER SOLICIT NOR ACCEPT GRATUITIES,
5 FAVORS, OR ANYTHING OF MONETARY VALUE FROM CONTRACTORS OR PARTIES TO
6 SUBCONTRACTS. HOWEVER, NON-FEDERAL ENTITIES MAY SET STANDARDS FOR SITUATIONS
7 IN WHICH THE FINANCIAL INTEREST IS NOT SUBSTANTIAL OR THE GIFT IS AN UNSOLICITED
8 ITEM OF NOMINAL VALUE. THE STANDARDS OF CONDUCT MUST PROVIDE FOR DISCIPLINARY
9 ACTIONS TO BE APPLIED FOR VIOLATIONS OF SUCH STANDARDS BY OFFICERS, EMPLOYEES, OR
10 AGENTS OF THE NON-FEDERAL ENTITY.

11 (2) IF THE NON-FEDERAL ENTITY HAS A PARENT, AFFILIATE, OR SUBSIDIARY ORGANIZATION
12 THAT IS NOT A STATE, LOCAL GOVERNMENT, OR INDIAN TRIBE, THE NON-FEDERAL ENTITY
13 MUST ALSO MAINTAIN WRITTEN STANDARDS OF CONDUCT COVERING ORGANIZATIONAL
14 CONFLICTS OF INTEREST. ORGANIZATIONAL CONFLICTS OF INTEREST MEANS THAT BECAUSE
15 OF RELATIONSHIPS WITH A PARENT COMPANY, AFFILIATE, OR SUBSIDIARY ORGANIZATION,
16 THE NON-FEDERAL ENTITY IS UNABLE OR APPEARS TO BE UNABLE TO BE IMPARTIAL IN
17 CONDUCTING A PROCUREMENT ACTION INVOLVING A RELATED ORGANIZATION.

18 (D) THE NON-FEDERAL ENTITY'S PROCEDURES MUST AVOID ACQUISITION OF UNNECESSARY OR
19 DUPLICATIVE ITEMS. CONSIDERATION SHOULD BE GIVEN TO CONSOLIDATING OR BREAKING OUT
20 PROCUREMENTS TO OBTAIN A MORE ECONOMICAL PURCHASE. WHERE APPROPRIATE, AN
21 ANALYSIS WILL BE MADE OF LEASE VERSUS PURCHASE ALTERNATIVES, AND ANY OTHER
22 APPROPRIATE ANALYSIS TO DETERMINE THE MOST ECONOMICAL APPROACH.

23 (E) TO FOSTER GREATER ECONOMY AND EFFICIENCY, AND IN ACCORDANCE WITH EFFORTS TO
24 PROMOTE COST-EFFECTIVE USE OF SHARED SERVICES ACROSS THE FEDERAL GOVERNMENT, THE
25 NON-FEDERAL ENTITY IS ENCOURAGED TO ENTER INTO STATE AND LOCAL INTERGOVERNMENTAL
26 AGREEMENTS OR INTER-ENTITY AGREEMENTS WHERE APPROPRIATE FOR PROCUREMENT OR USE
27 OF COMMON OR SHARED GOODS AND SERVICES.

28 (F) THE NON-FEDERAL ENTITY IS ENCOURAGED TO USE FEDERAL EXCESS AND SURPLUS
29 PROPERTY IN LIEU OF PURCHASING NEW EQUIPMENT AND PROPERTY WHENEVER SUCH USE IS
30 FEASIBLE AND REDUCES PROJECT COSTS.

31 (G) THE NON-FEDERAL ENTITY IS ENCOURAGED TO USE VALUE ENGINEERING CLAUSES IN
32 CONTRACTS FOR CONSTRUCTION PROJECTS OF SUFFICIENT SIZE TO OFFER REASONABLE

1 OPPORTUNITIES FOR COST REDUCTIONS. VALUE ENGINEERING IS A SYSTEMATIC AND CREATIVE
2 ANALYSIS OF EACH CONTRACT ITEM OR TASK TO ENSURE THAT ITS ESSENTIAL FUNCTION IS
3 PROVIDED AT THE OVERALL LOWER COST.

4 (H) THE NON-FEDERAL ENTITY MUST AWARD CONTRACTS ONLY TO RESPONSIBLE CONTRACTORS
5 POSSESSING THE ABILITY TO PERFORM SUCCESSFULLY UNDER THE TERMS AND CONDITIONS OF A
6 PROPOSED PROCUREMENT. CONSIDERATION WILL BE GIVEN TO SUCH MATTERS AS CONTRACTOR
7 INTEGRITY, COMPLIANCE WITH PUBLIC POLICY, RECORD OF PAST PERFORMANCE, AND FINANCIAL
8 AND TECHNICAL RESOURCES. SEE ALSO §200.213 SUSPENSION AND DEBARMENT.

9 (I) THE NON-FEDERAL ENTITY MUST MAINTAIN RECORDS SUFFICIENT TO DETAIL THE HISTORY
10 OF PROCUREMENT. THESE RECORDS WILL INCLUDE, BUT ARE NOT NECESSARILY LIMITED TO THE
11 FOLLOWING: RATIONALE FOR THE METHOD OF PROCUREMENT, SELECTION OF CONTRACT TYPE,
12 CONTRACTOR SELECTION OR REJECTION, AND THE BASIS FOR THE CONTRACT PRICE.

13 (J)(1) THE NON-FEDERAL ENTITY MAY USE A TIME AND MATERIALS TYPE CONTRACT ONLY AFTER
14 A DETERMINATION THAT NO OTHER CONTRACT IS SUITABLE AND IF THE CONTRACT INCLUDES
15 A CEILING PRICE THAT THE CONTRACTOR EXCEEDS AT ITS OWN RISK. TIME AND MATERIALS
16 TYPE CONTRACT MEANS A CONTRACT WHOSE COST TO A NON-FEDERAL ENTITY IS THE SUM
17 OF:

- 18 (I) THE ACTUAL COST OF MATERIALS; AND
- 19 (II) DIRECT LABOR HOURS CHARGED AT FIXED HOURLY RATES THAT REFLECT WAGES,
20 GENERAL AND ADMINISTRATIVE EXPENSES, AND PROFIT.

21 (2) SINCE THIS FORMULA GENERATES AN OPEN-ENDED CONTRACT PRICE, A TIME-AND-
22 MATERIALS CONTRACT PROVIDES NO POSITIVE PROFIT INCENTIVE TO THE CONTRACTOR FOR
23 COST CONTROL OR LABOR EFFICIENCY. THEREFORE, EACH CONTRACT MUST SET A CEILING
24 PRICE THAT THE CONTRACTOR EXCEEDS AT ITS OWN RISK. FURTHER, THE NON-FEDERAL
25 ENTITY AWARDING SUCH A CONTRACT MUST ASSERT A HIGH DEGREE OF OVERSIGHT IN
26 ORDER TO OBTAIN REASONABLE ASSURANCE THAT THE CONTRACTOR IS USING EFFICIENT
27 METHODS AND EFFECTIVE COST CONTROLS.

28 (K) THE NON-FEDERAL ENTITY ALONE MUST BE RESPONSIBLE, IN ACCORDANCE WITH GOOD
29 ADMINISTRATIVE PRACTICE AND SOUND BUSINESS JUDGMENT, FOR THE SETTLEMENT OF ALL
30 CONTRACTUAL AND ADMINISTRATIVE ISSUES ARISING OUT OF PROCUREMENTS. THESE ISSUES
31 INCLUDE, BUT ARE NOT LIMITED TO, SOURCE EVALUATION, PROTESTS, DISPUTES, AND CLAIMS.
32 THESE STANDARDS DO NOT RELIEVE THE NON-FEDERAL ENTITY OF ANY CONTRACTUAL

1 RESPONSIBILITIES UNDER ITS CONTRACTS. THE FEDERAL AWARDING AGENCY WILL NOT
2 SUBSTITUTE ITS JUDGMENT FOR THAT OF THE NON-FEDERAL ENTITY UNLESS THE MATTER IS
3 PRIMARILY A FEDERAL CONCERN. VIOLATIONS OF LAW WILL BE REFERRED TO THE LOCAL, STATE,
4 OR FEDERAL AUTHORITY HAVING PROPER JURISDICTION.

5 [78 FR 78608, DEC. 26, 2013, AS AMENDED AT 79 FR 75885, DEC. 19, 2014; 80 FR 43309, JULY 22,
6 2015]

7

8 **§200.319 COMPETITION.**

9 (A) ALL PROCUREMENT TRANSACTIONS MUST BE CONDUCTED IN A MANNER PROVIDING FULL
10 AND OPEN COMPETITION CONSISTENT WITH THE STANDARDS OF THIS SECTION. IN ORDER TO
11 ENSURE OBJECTIVE CONTRACTOR PERFORMANCE AND ELIMINATE UNFAIR COMPETITIVE
12 ADVANTAGE, CONTRACTORS THAT DEVELOP OR DRAFT SPECIFICATIONS, REQUIREMENTS,
13 STATEMENTS OF WORK, OR INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS MUST BE
14 EXCLUDED FROM COMPETING FOR SUCH PROCUREMENTS. SOME OF THE SITUATIONS
15 CONSIDERED TO BE RESTRICTIVE OF COMPETITION INCLUDE BUT ARE NOT LIMITED TO:

16 (1) PLACING UNREASONABLE REQUIREMENTS ON FIRMS IN ORDER FOR THEM TO QUALIFY TO
17 DO BUSINESS;

18 (2) REQUIRING UNNECESSARY EXPERIENCE AND EXCESSIVE BONDING;

19 (3) NONCOMPETITIVE PRICING PRACTICES BETWEEN FIRMS OR BETWEEN AFFILIATED
20 COMPANIES;

21 (4) NONCOMPETITIVE CONTRACTS TO CONSULTANTS THAT ARE ON RETAINER CONTRACTS;

22 (5) ORGANIZATIONAL CONFLICTS OF INTEREST;

23 (6) SPECIFYING ONLY A "BRAND NAME" PRODUCT INSTEAD OF ALLOWING "AN EQUAL"
24 PRODUCT TO BE OFFERED AND DESCRIBING THE PERFORMANCE OR OTHER RELEVANT
25 REQUIREMENTS OF THE PROCUREMENT; AND

26 (7) ANY ARBITRARY ACTION IN THE PROCUREMENT PROCESS.

27 (B) THE NON-FEDERAL ENTITY MUST CONDUCT PROCUREMENTS IN A MANNER THAT PROHIBITS
28 THE USE OF STATUTORILY OR ADMINISTRATIVELY IMPOSED STATE, LOCAL, OR TRIBAL
29 GEOGRAPHICAL PREFERENCES IN THE EVALUATION OF BIDS OR PROPOSALS, EXCEPT IN THOSE
30 CASES WHERE APPLICABLE FEDERAL STATUTES EXPRESSLY MANDATE OR ENCOURAGE
31 GEOGRAPHIC PREFERENCE. NOTHING IN THIS SECTION PREEMPTS STATE LICENSING LAWS.

32 WHEN CONTRACTING FOR ARCHITECTURAL AND ENGINEERING (A/E) SERVICES, GEOGRAPHIC

1 LOCATION MAY BE A SELECTION CRITERION PROVIDED ITS APPLICATION LEAVES AN APPROPRIATE
2 NUMBER OF QUALIFIED FIRMS, GIVEN THE NATURE AND SIZE OF THE PROJECT, TO COMPETE FOR
3 THE CONTRACT.

4 (C) THE NON-FEDERAL ENTITY MUST HAVE WRITTEN PROCEDURES FOR PROCUREMENT
5 TRANSACTIONS. THESE PROCEDURES MUST ENSURE THAT ALL SOLICITATIONS:

6 (1) INCORPORATE A CLEAR AND ACCURATE DESCRIPTION OF THE TECHNICAL REQUIREMENTS
7 FOR THE MATERIAL, PRODUCT, OR SERVICE TO BE PROCURED. SUCH DESCRIPTION MUST NOT,
8 IN COMPETITIVE PROCUREMENTS, CONTAIN FEATURES WHICH UNDULY RESTRICT
9 COMPETITION. THE DESCRIPTION MAY INCLUDE A STATEMENT OF THE QUALITATIVE NATURE
10 OF THE MATERIAL, PRODUCT OR SERVICE TO BE PROCURED AND, WHEN NECESSARY, MUST
11 SET FORTH THOSE MINIMUM ESSENTIAL CHARACTERISTICS AND STANDARDS TO WHICH IT
12 MUST CONFORM IF IT IS TO SATISFY ITS INTENDED USE. DETAILED PRODUCT SPECIFICATIONS
13 SHOULD BE AVOIDED IF AT ALL POSSIBLE. WHEN IT IS IMPRACTICAL OR UNECONOMICAL TO
14 MAKE A CLEAR AND ACCURATE DESCRIPTION OF THE TECHNICAL REQUIREMENTS, A “BRAND
15 NAME OR EQUIVALENT” DESCRIPTION MAY BE USED AS A MEANS TO DEFINE THE
16 PERFORMANCE OR OTHER SALIENT REQUIREMENTS OF PROCUREMENT. THE SPECIFIC
17 FEATURES OF THE NAMED BRAND WHICH MUST BE MET BY OFFERS MUST BE CLEARLY
18 STATED; AND

19 (2) IDENTIFY ALL REQUIREMENTS WHICH THE OFFERORS MUST FULFILL AND ALL OTHER
20 FACTORS TO BE USED IN EVALUATING BIDS OR PROPOSALS.

21 (D) THE NON-FEDERAL ENTITY MUST ENSURE THAT ALL PREQUALIFIED LISTS OF PERSONS,
22 FIRMS, OR PRODUCTS WHICH ARE USED IN ACQUIRING GOODS AND SERVICES ARE CURRENT AND
23 INCLUDE ENOUGH QUALIFIED SOURCES TO ENSURE MAXIMUM OPEN AND FREE COMPETITION.
24 ALSO, THE NON-FEDERAL ENTITY MUST NOT PRECLUDE POTENTIAL BIDDERS FROM QUALIFYING
25 DURING THE SOLICITATION PERIOD.

26 [78 FR 78608, DEC. 26, 2013, AS AMENDED AT 79 FR 75885, DEC. 19, 2014]

27

28 **§200.320 METHODS OF PROCUREMENT TO BE FOLLOWED.**

29 THE NON-FEDERAL ENTITY MUST USE ONE OF THE FOLLOWING METHODS OF PROCUREMENT.

30 (A) PROCUREMENT BY MICRO-PURCHASES. PROCUREMENT BY MICRO-PURCHASE IS THE
31 ACQUISITION OF SUPPLIES OR SERVICES, THE AGGREGATE DOLLAR AMOUNT OF WHICH DOES NOT
32 EXCEED THE MICRO-PURCHASE THRESHOLD (§200.67 MICRO-PURCHASE). TO THE EXTENT

1 PRACTICABLE, THE NON-FEDERAL ENTITY MUST DISTRIBUTE MICRO-PURCHASES EQUITABLY
2 AMONG QUALIFIED SUPPLIERS. MICRO-PURCHASES MAY BE AWARDED WITHOUT SOLICITING
3 COMPETITIVE QUOTATIONS IF THE NON-FEDERAL ENTITY CONSIDERS THE PRICE TO BE
4 REASONABLE.

5 (B) PROCUREMENT BY SMALL PURCHASE PROCEDURES. SMALL PURCHASE PROCEDURES ARE
6 THOSE RELATIVELY SIMPLE AND INFORMAL PROCUREMENT METHODS FOR SECURING SERVICES,
7 SUPPLIES, OR OTHER PROPERTY THAT DO NOT COST MORE THAN THE SIMPLIFIED ACQUISITION
8 THRESHOLD. IF SMALL PURCHASE PROCEDURES ARE USED, PRICE OR RATE QUOTATIONS MUST BE
9 OBTAINED FROM AN ADEQUATE NUMBER OF QUALIFIED SOURCES.

10 (C) PROCUREMENT BY SEALED BIDS (FORMAL ADVERTISING). BIDS ARE PUBLICLY SOLICITED AND
11 A FIRM FIXED PRICE CONTRACT (LUMP SUM OR UNIT PRICE) IS AWARDED TO THE RESPONSIBLE
12 BIDDER WHOSE BID, CONFORMING WITH ALL THE MATERIAL TERMS AND CONDITIONS OF THE
13 INVITATION FOR BIDS, IS THE LOWEST IN PRICE. THE SEALED BID METHOD IS THE PREFERRED
14 METHOD FOR PROCURING CONSTRUCTION, IF THE CONDITIONS IN PARAGRAPH (C)(1) OF THIS
15 SECTION APPLY.

16 (1) IN ORDER FOR SEALED BIDDING TO BE FEASIBLE, THE FOLLOWING CONDITIONS SHOULD
17 BE PRESENT:

18 (I) A COMPLETE, ADEQUATE, AND REALISTIC SPECIFICATION OR PURCHASE DESCRIPTION
19 IS AVAILABLE;

20 (II) TWO OR MORE RESPONSIBLE BIDDERS ARE WILLING AND ABLE TO COMPETE
21 EFFECTIVELY FOR THE BUSINESS; AND

22 (III) THE PROCUREMENT LENDS ITSELF TO A FIRM FIXED PRICE CONTRACT AND THE
23 SELECTION OF THE SUCCESSFUL BIDDER CAN BE MADE PRINCIPALLY ON THE BASIS OF
24 PRICE.

25 (2) IF SEALED BIDS ARE USED, THE FOLLOWING REQUIREMENTS APPLY:

26 (I) BIDS MUST BE SOLICITED FROM AN ADEQUATE NUMBER OF KNOWN SUPPLIERS,
27 PROVIDING THEM SUFFICIENT RESPONSE TIME PRIOR TO THE DATE SET FOR OPENING
28 THE BIDS, FOR LOCAL, AND TRIBAL GOVERNMENTS, THE INVITATION FOR BIDS MUST
29 BE PUBLICLY ADVERTISED;

30 (II) THE INVITATION FOR BIDS, WHICH WILL INCLUDE ANY SPECIFICATIONS AND
31 PERTINENT ATTACHMENTS, MUST DEFINE THE ITEMS OR SERVICES IN ORDER FOR THE
32 BIDDER TO PROPERLY RESPOND;

1 (III) ALL BIDS WILL BE OPENED AT THE TIME AND PLACE PRESCRIBED IN THE INVITATION
2 FOR BIDS, AND FOR LOCAL AND TRIBAL GOVERNMENTS, THE BIDS MUST BE OPENED
3 PUBLICLY;

4 (IV) A FIRM FIXED PRICE CONTRACT AWARD WILL BE MADE IN WRITING TO THE LOWEST
5 RESPONSIVE AND RESPONSIBLE BIDDER. WHERE SPECIFIED IN BIDDING DOCUMENTS,
6 FACTORS SUCH AS DISCOUNTS, TRANSPORTATION COST, AND LIFE CYCLE COSTS MUST
7 BE CONSIDERED IN DETERMINING WHICH BID IS LOWEST. PAYMENT DISCOUNTS WILL
8 ONLY BE USED TO DETERMINE THE LOW BID WHEN PRIOR EXPERIENCE INDICATES
9 THAT SUCH DISCOUNTS ARE USUALLY TAKEN ADVANTAGE OF; AND

10 (V) ANY OR ALL BIDS MAY BE REJECTED IF THERE IS A SOUND DOCUMENTED REASON.

11 (D) PROCUREMENT BY COMPETITIVE PROPOSALS. THE TECHNIQUE OF COMPETITIVE PROPOSALS
12 IS NORMALLY CONDUCTED WITH MORE THAN ONE SOURCE SUBMITTING AN OFFER, AND EITHER A
13 FIXED PRICE OR COST-REIMBURSEMENT TYPE CONTRACT IS AWARDED. IT IS GENERALLY USED
14 WHEN CONDITIONS ARE NOT APPROPRIATE FOR THE USE OF SEALED BIDS. IF THIS METHOD IS
15 USED, THE FOLLOWING REQUIREMENTS APPLY:

16 (1) REQUESTS FOR PROPOSALS MUST BE PUBLICIZED AND IDENTIFY ALL EVALUATION
17 FACTORS AND THEIR RELATIVE IMPORTANCE. ANY RESPONSE TO PUBLICIZED REQUESTS FOR
18 PROPOSALS MUST BE CONSIDERED TO THE MAXIMUM EXTENT PRACTICAL;

19 (2) PROPOSALS MUST BE SOLICITED FROM AN ADEQUATE NUMBER OF QUALIFIED SOURCES;

20 (3) THE NON-FEDERAL ENTITY MUST HAVE A WRITTEN METHOD FOR CONDUCTING
21 TECHNICAL EVALUATIONS OF THE PROPOSALS RECEIVED AND FOR SELECTING RECIPIENTS;

22 (4) CONTRACTS MUST BE AWARDED TO THE RESPONSIBLE FIRM WHOSE PROPOSAL IS MOST
23 ADVANTAGEOUS TO THE PROGRAM, WITH PRICE AND OTHER FACTORS CONSIDERED; AND

24 (5) THE NON-FEDERAL ENTITY MAY USE COMPETITIVE PROPOSAL PROCEDURES FOR
25 QUALIFICATIONS-BASED PROCUREMENT OF ARCHITECTURAL/ENGINEERING (A/E)
26 PROFESSIONAL SERVICES WHEREBY COMPETITORS' QUALIFICATIONS ARE EVALUATED AND
27 THE MOST QUALIFIED COMPETITOR IS SELECTED, SUBJECT TO NEGOTIATION OF FAIR AND
28 REASONABLE COMPENSATION. THE METHOD, WHERE PRICE IS NOT USED AS A SELECTION
29 FACTOR, CAN ONLY BE USED IN PROCUREMENT OF A/E PROFESSIONAL SERVICES. IT CANNOT
30 BE USED TO PURCHASE OTHER TYPES OF SERVICES THOUGH A/E FIRMS ARE A POTENTIAL
31 SOURCE TO PERFORM THE PROPOSED EFFORT.

32 (E) [RESERVED]

1 (F) PROCUREMENT BY NONCOMPETITIVE PROPOSALS. PROCUREMENT BY NONCOMPETITIVE
2 PROPOSALS IS PROCUREMENT THROUGH SOLICITATION OF A PROPOSAL FROM ONLY ONE SOURCE
3 AND MAY BE USED ONLY WHEN ONE OR MORE OF THE FOLLOWING CIRCUMSTANCES APPLY:

4 (1) THE ITEM IS AVAILABLE ONLY FROM A SINGLE SOURCE;

5 (2) THE PUBLIC EXIGENCY OR EMERGENCY FOR THE REQUIREMENT WILL NOT PERMIT A
6 DELAY RESULTING FROM COMPETITIVE SOLICITATION;

7 (3) THE FEDERAL AWARDDING AGENCY OR PASS-THROUGH ENTITY EXPRESSLY AUTHORIZES
8 NONCOMPETITIVE PROPOSALS IN RESPONSE TO A WRITTEN REQUEST FROM THE NON-
9 FEDERAL ENTITY; OR

10 (4) AFTER SOLICITATION OF A NUMBER OF SOURCES, COMPETITION IS DETERMINED
11 INADEQUATE.

12 [78 FR 78608, DEC. 26, 2013, AS AMENDED AT 79 FR 75885, DEC. 19, 2014; 80 FR 54409, SEPT. 10,
13 2015]

14
15 **§200.321 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S**
16 **BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.**

17 (A) THE NON-FEDERAL ENTITY MUST TAKE ALL NECESSARY AFFIRMATIVE STEPS TO ASSURE THAT
18 MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS ARE
19 USED WHEN POSSIBLE.

20 (B) AFFIRMATIVE STEPS MUST INCLUDE:

21 (1) PLACING QUALIFIED SMALL AND MINORITY BUSINESSES AND WOMEN'S BUSINESS
22 ENTERPRISES ON SOLICITATION LISTS;

23 (2) ASSURING THAT SMALL AND MINORITY BUSINESSES, AND WOMEN'S BUSINESS
24 ENTERPRISES ARE SOLICITED WHENEVER THEY ARE POTENTIAL SOURCES;

25 (3) DIVIDING TOTAL REQUIREMENTS, WHEN ECONOMICALLY FEASIBLE, INTO SMALLER TASKS
26 OR QUANTITIES TO PERMIT MAXIMUM PARTICIPATION BY SMALL AND MINORITY BUSINESSES,
27 AND WOMEN'S BUSINESS ENTERPRISES;

28 (4) ESTABLISHING DELIVERY SCHEDULES, WHERE THE REQUIREMENT PERMITS, WHICH
29 ENCOURAGE PARTICIPATION BY SMALL AND MINORITY BUSINESSES, AND WOMEN'S BUSINESS
30 ENTERPRISES;

1 (5) USING THE SERVICES AND ASSISTANCE, AS APPROPRIATE, OF SUCH ORGANIZATIONS AS
2 THE SMALL BUSINESS ADMINISTRATION AND THE MINORITY BUSINESS DEVELOPMENT
3 AGENCY OF THE DEPARTMENT OF COMMERCE; AND

4 (6) REQUIRING THE PRIME CONTRACTOR, IF SUBCONTRACTS ARE TO BE LET, TO TAKE THE
5 AFFIRMATIVE STEPS LISTED IN PARAGRAPHS (1) THROUGH (5) OF THIS SECTION.
6

7 **§200.322 PROCUREMENT OF RECOVERED MATERIALS.**

8 A NON-FEDERAL ENTITY THAT IS A STATE AGENCY OR AGENCY OF A POLITICAL SUBDIVISION OF A
9 STATE AND ITS CONTRACTORS MUST COMPLY WITH SECTION 6002 OF THE SOLID WASTE
10 DISPOSAL ACT, AS AMENDED BY THE RESOURCE CONSERVATION AND RECOVERY ACT. THE
11 REQUIREMENTS OF SECTION 6002 INCLUDE PROCURING ONLY ITEMS DESIGNATED IN
12 GUIDELINES OF THE ENVIRONMENTAL PROTECTION AGENCY (EPA) AT 40 CFR PART 247 THAT
13 CONTAIN THE HIGHEST PERCENTAGE OF RECOVERED MATERIALS PRACTICABLE, CONSISTENT
14 WITH MAINTAINING A SATISFACTORY LEVEL OF COMPETITION, WHERE THE PURCHASE PRICE OF
15 THE ITEM EXCEEDS \$10,000 OR THE VALUE OF THE QUANTITY ACQUIRED DURING THE
16 PRECEDING FISCAL YEAR EXCEEDED \$10,000; PROCURING SOLID WASTE MANAGEMENT
17 SERVICES IN A MANNER THAT MAXIMIZES ENERGY AND RESOURCE RECOVERY; AND
18 ESTABLISHING AN AFFIRMATIVE PROCUREMENT PROGRAM FOR PROCUREMENT OF RECOVERED
19 MATERIALS IDENTIFIED IN THE EPA GUIDELINES.

20 [78 FR 78608, DEC. 26, 2013, AS AMENDED AT 79 FR 75885, DEC. 19, 2014]
21

22 **§200.323 CONTRACT COST AND PRICE.**

23 (A) THE NON-FEDERAL ENTITY MUST PERFORM A COST OR PRICE ANALYSIS IN CONNECTION WITH
24 EVERY PROCUREMENT ACTION IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD
25 INCLUDING CONTRACT MODIFICATIONS. THE METHOD AND DEGREE OF ANALYSIS IS DEPENDENT
26 ON THE FACTS SURROUNDING THE PARTICULAR PROCUREMENT SITUATION, BUT AS A STARTING
27 POINT, THE NON-FEDERAL ENTITY MUST MAKE INDEPENDENT ESTIMATES BEFORE RECEIVING
28 BIDS OR PROPOSALS.

29 (B) THE NON-FEDERAL ENTITY MUST NEGOTIATE PROFIT AS A SEPARATE ELEMENT OF THE PRICE
30 FOR EACH CONTRACT IN WHICH THERE IS NO PRICE COMPETITION AND IN ALL CASES WHERE
31 COST ANALYSIS IS PERFORMED. TO ESTABLISH A FAIR AND REASONABLE PROFIT, CONSIDERATION
32 MUST BE GIVEN TO THE COMPLEXITY OF THE WORK TO BE PERFORMED, THE RISK BORNE BY THE

1 CONTRACTOR, THE CONTRACTOR'S INVESTMENT, THE AMOUNT OF SUBCONTRACTING, THE
2 QUALITY OF ITS RECORD OF PAST PERFORMANCE, AND INDUSTRY PROFIT RATES IN THE
3 SURROUNDING GEOGRAPHICAL AREA FOR SIMILAR WORK.

4 (C) COSTS OR PRICES BASED ON ESTIMATED COSTS FOR CONTRACTS UNDER THE FEDERAL AWARD
5 ARE ALLOWABLE ONLY TO THE EXTENT THAT COSTS INCURRED OR COST ESTIMATES INCLUDED IN
6 NEGOTIATED PRICES WOULD BE ALLOWABLE FOR THE NON-FEDERAL ENTITY UNDER SUBPART
7 E—COST PRINCIPLES OF THIS PART. THE NON-FEDERAL ENTITY MAY REFERENCE ITS OWN COST
8 PRINCIPLES THAT COMPLY WITH THE FEDERAL COST PRINCIPLES.

9 (D) THE COST PLUS A PERCENTAGE OF COST AND PERCENTAGE OF CONSTRUCTION COST
10 METHODS OF CONTRACTING MUST NOT BE USED.

11

12 **§200.324 FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW.**

13 (A) THE NON-FEDERAL ENTITY MUST MAKE AVAILABLE, UPON REQUEST OF THE FEDERAL
14 AWARDING AGENCY OR PASS-THROUGH ENTITY, TECHNICAL SPECIFICATIONS ON PROPOSED
15 PROCUREMENTS WHERE THE FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY BELIEVES
16 SUCH REVIEW IS NEEDED TO ENSURE THAT THE ITEM OR SERVICE SPECIFIED IS THE ONE BEING
17 PROPOSED FOR ACQUISITION. THIS REVIEW GENERALLY WILL TAKE PLACE PRIOR TO THE TIME
18 THE SPECIFICATION IS INCORPORATED INTO A SOLICITATION DOCUMENT. HOWEVER, IF THE
19 NON-FEDERAL ENTITY DESIRES TO HAVE THE REVIEW ACCOMPLISHED AFTER A SOLICITATION
20 HAS BEEN DEVELOPED, THE FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY MAY STILL
21 REVIEW THE SPECIFICATIONS, WITH SUCH REVIEW USUALLY LIMITED TO THE TECHNICAL
22 ASPECTS OF THE PROPOSED PURCHASE.

23 (B) THE NON-FEDERAL ENTITY MUST MAKE AVAILABLE UPON REQUEST, FOR THE FEDERAL
24 AWARDING AGENCY OR PASS-THROUGH ENTITY PRE-PROCUREMENT REVIEW, PROCUREMENT
25 DOCUMENTS, SUCH AS REQUESTS FOR PROPOSALS OR INVITATIONS FOR BIDS, OR INDEPENDENT
26 COST ESTIMATES, WHEN:

27 (1) THE NON-FEDERAL ENTITY'S PROCUREMENT PROCEDURES OR OPERATION FAILS TO
28 COMPLY WITH THE PROCUREMENT STANDARDS IN THIS PART;

29 (2) THE PROCUREMENT IS EXPECTED TO EXCEED THE SIMPLIFIED ACQUISITION THRESHOLD
30 AND IS TO BE AWARDED WITHOUT COMPETITION OR ONLY ONE BID OR OFFER IS RECEIVED IN
31 RESPONSE TO A SOLICITATION;

1 (3) THE PROCUREMENT, WHICH IS EXPECTED TO EXCEED THE SIMPLIFIED ACQUISITION
2 THRESHOLD, SPECIFIES A "BRAND NAME" PRODUCT;

3 (4) THE PROPOSED CONTRACT IS MORE THAN THE SIMPLIFIED ACQUISITION THRESHOLD
4 AND IS TO BE AWARDED TO OTHER THAN THE APPARENT LOW BIDDER UNDER A SEALED BID
5 PROCUREMENT; OR

6 (5) A PROPOSED CONTRACT MODIFICATION CHANGES THE SCOPE OF A CONTRACT OR
7 INCREASES THE CONTRACT AMOUNT BY MORE THAN THE SIMPLIFIED ACQUISITION
8 THRESHOLD.

9 (C) THE NON-FEDERAL ENTITY IS EXEMPT FROM THE PRE-PROCUREMENT REVIEW IN
10 PARAGRAPH (B) OF THIS SECTION IF THE FEDERAL AWARDING AGENCY OR PASS-THROUGH
11 ENTITY DETERMINES THAT ITS PROCUREMENT SYSTEMS COMPLY WITH THE STANDARDS OF THIS
12 PART.

13 (1) THE NON-FEDERAL ENTITY MAY REQUEST THAT ITS PROCUREMENT SYSTEM BE REVIEWED
14 BY THE FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY TO DETERMINE WHETHER
15 ITS SYSTEM MEETS THESE STANDARDS IN ORDER FOR ITS SYSTEM TO BE CERTIFIED.

16 GENERALLY, THESE REVIEWS MUST OCCUR WHERE THERE IS CONTINUOUS HIGH-DOLLAR
17 FUNDING, AND THIRD-PARTY CONTRACTS ARE AWARDED ON A REGULAR BASIS;

18 (2) THE NON-FEDERAL ENTITY MAY SELF-CERTIFY ITS PROCUREMENT SYSTEM. SUCH SELF-
19 CERTIFICATION MUST NOT LIMIT THE FEDERAL AWARDING AGENCY'S RIGHT TO SURVEY THE
20 SYSTEM. UNDER A SELF-CERTIFICATION PROCEDURE, THE FEDERAL AWARDING AGENCY MAY
21 RELY ON WRITTEN ASSURANCES FROM THE NON-FEDERAL ENTITY THAT IT IS COMPLYING
22 WITH THESE STANDARDS. THE NON-FEDERAL ENTITY MUST CITE SPECIFIC POLICIES,
23 PROCEDURES, REGULATIONS, OR STANDARDS AS BEING IN COMPLIANCE WITH THESE
24 REQUIREMENTS AND HAVE ITS SYSTEM AVAILABLE FOR REVIEW.

25
26 **§200.325 BONDING REQUIREMENTS**

27 FOR CONSTRUCTION OR FACILITY IMPROVEMENT CONTRACTS OR SUBCONTRACTS EXCEEDING
28 THE SIMPLIFIED ACQUISITION THRESHOLD, THE FEDERAL AWARDING AGENCY OR PASS-
29 THROUGH ENTITY MAY ACCEPT THE BONDING POLICY AND REQUIREMENTS OF THE NON-
30 FEDERAL ENTITY PROVIDED THAT THE FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY
31 HAS MADE A DETERMINATION THAT THE FEDERAL INTEREST IS ADEQUATELY PROTECTED. IF

1 SUCH A DETERMINATION HAS NOT BEEN MADE, THE MINIMUM REQUIREMENTS MUST BE AS
2 FOLLOWS:

3 (A) A BID GUARANTEE FROM EACH BIDDER EQUIVALENT TO FIVE PERCENT OF THE BID PRICE.
4 THE "BID GUARANTEE" MUST CONSIST OF A FIRM COMMITMENT SUCH AS A BID BOND, CERTIFIED
5 CHECK, OR OTHER NEGOTIABLE INSTRUMENT ACCOMPANYING A BID AS ASSURANCE THAT THE
6 BIDDER WILL, UPON ACCEPTANCE OF THE BID, EXECUTE SUCH CONTRACTUAL DOCUMENTS AS
7 MAY BE REQUIRED WITHIN THE TIME SPECIFIED.

8 (B) A PERFORMANCE BOND ON THE PART OF THE CONTRACTOR FOR 100 PERCENT OF THE
9 CONTRACT PRICE. A "PERFORMANCE BOND" IS ONE EXECUTED IN CONNECTION WITH A
10 CONTRACT TO SECURE FULFILLMENT OF ALL THE CONTRACTOR'S OBLIGATIONS UNDER SUCH
11 CONTRACT.

12 (C) A PAYMENT BOND ON THE PART OF THE CONTRACTOR FOR 100 PERCENT OF THE CONTRACT
13 PRICE. A "PAYMENT BOND" IS ONE EXECUTED IN CONNECTION WITH A CONTRACT TO ASSURE
14 PAYMENT AS REQUIRED BY LAW OF ALL PERSONS SUPPLYING LABOR AND MATERIAL IN THE
15 EXECUTION OF THE WORK PROVIDED FOR IN THE CONTRACT.

16

17 **§200.326 CONTRACT PROVISIONS.**

18 THE NON-FEDERAL ENTITY'S CONTRACTS MUST CONTAIN THE APPLICABLE PROVISIONS
19 DESCRIBED IN APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
20 CONTRACTS UNDER FEDERAL AWARDS.

21

22

23 **APPENDIX II – FULL TEXT OF THE FEDERALLY MANDATED CONTRACT**
24 **PROVISIONS**

25 IN ADDITION TO OTHER PROVISIONS REQUIRED BY THE FEDERAL AGENCY OR NON-FEDERAL
26 ENTITY, ALL CONTRACTS MADE BY THE COUNTY UNDER THE FEDERAL AWARD MUST CONTAIN
27 PROVISIONS COVERING THE FOLLOWING, AS APPLICABLE.

28 (A) CONTRACTS FOR MORE THAN THE SIMPLIFIED ACQUISITION THRESHOLD CURRENTLY SET AT
29 \$150,000, WHICH IS THE INFLATION ADJUSTED AMOUNT DETERMINED BY THE CIVILIAN
30 AGENCY ACQUISITION COUNCIL AND THE DEFENSE ACQUISITION REGULATIONS COUNCIL
31 (COUNCILS) AS AUTHORIZED BY 41 U.S.C. 1908, MUST ADDRESS ADMINISTRATIVE,

1 CONTRACTUAL, OR LEGAL REMEDIES IN INSTANCES WHERE CONTRACTORS VIOLATE OR BREACH
2 CONTRACT TERMS, AND PROVIDE FOR SUCH SANCTIONS AND PENALTIES AS APPROPRIATE.

3 (B) ALL CONTRACTS IN EXCESS OF \$10,000 MUST ADDRESS TERMINATION FOR CAUSE AND FOR
4 CONVENIENCE BY THE NON-FEDERAL ENTITY INCLUDING THE MANNER BY WHICH IT WILL BE
5 AFFECTED AND THE BASIS FOR SETTLEMENT.

6 (C) EQUAL EMPLOYMENT OPPORTUNITY. EXCEPT AS OTHERWISE PROVIDED UNDER 41 CFR
7 PART 60, ALL CONTRACTS THAT MEET THE DEFINITION OF "FEDERALLY ASSISTED CONSTRUCTION
8 CONTRACT" IN 41 CFR PART 60-1.3 MUST INCLUDE THE EQUAL OPPORTUNITY CLAUSE PROVIDED
9 UNDER 41 CFR 60-1.4(B), IN ACCORDANCE WITH EXECUTIVE ORDER 11246, "EQUAL
10 EMPLOYMENT OPPORTUNITY" (30 FR 12319, 12935, 3 CFR PART, 1964-1965 COMP., P. 339),
11 AS AMENDED BY EXECUTIVE ORDER 11375, "AMENDING EXECUTIVE ORDER 11246 RELATING
12 TO EQUAL EMPLOYMENT OPPORTUNITY," AND IMPLEMENTING REGULATIONS AT 41 CFR PART
13 60, "OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, EQUAL EMPLOYMENT
14 OPPORTUNITY, DEPARTMENT OF LABOR."

15 (D) DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148). WHEN REQUIRED BY FEDERAL
16 PROGRAM LEGISLATION, ALL PRIME CONSTRUCTION CONTRACTS IN EXCESS OF \$2,000 AWARDED
17 BY NON-FEDERAL ENTITIES MUST INCLUDE A PROVISION FOR COMPLIANCE WITH THE DAVIS-
18 BACON ACT (40 U.S.C. 3141-3144, AND 3146-3148) AS SUPPLEMENTED BY DEPARTMENT OF
19 LABOR REGULATIONS (29 CFR PART 5, "LABOR STANDARDS PROVISIONS APPLICABLE TO
20 CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION"). IN
21 ACCORDANCE WITH THE STATUTE, CONTRACTORS MUST BE REQUIRED TO PAY WAGES TO
22 LABORERS AND MECHANICS AT A RATE NOT LESS THAN THE PREVAILING WAGES SPECIFIED IN A
23 WAGE DETERMINATION MADE BY THE SECRETARY OF LABOR. IN ADDITION, CONTRACTORS MUST
24 BE REQUIRED TO PAY WAGES NOT LESS THAN ONCE A WEEK. THE NON-FEDERAL ENTITY MUST
25 PLACE A COPY OF THE CURRENT PREVAILING WAGE DETERMINATION ISSUED BY THE
26 DEPARTMENT OF LABOR IN EACH SOLICITATION. THE DECISION TO AWARD A CONTRACT OR
27 SUBCONTRACT MUST BE CONDITIONED UPON THE ACCEPTANCE OF THE WAGE DETERMINATION.
28 THE NON-FEDERAL ENTITY MUST REPORT ALL SUSPECTED OR REPORTED VIOLATIONS TO THE
29 FEDERAL AWARDDING AGENCY. THE CONTRACTS MUST ALSO INCLUDE A PROVISION FOR
30 COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT (40 U.S.C. 3145), AS
31 SUPPLEMENTED BY DEPARTMENT OF LABOR REGULATIONS (29 CFR PART 3, "CONTRACTORS
32 AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN

1 PART BY LOANS OR GRANTS FROM THE UNITED STATES”). THE ACT PROVIDES THAT EACH
2 CONTRACTOR OR SUBRECIPIENT MUST BE PROHIBITED FROM INDUCING, BY ANY MEANS, ANY
3 PERSON EMPLOYED IN THE CONSTRUCTION, COMPLETION, OR REPAIR OF PUBLIC WORK, TO GIVE
4 UP ANY PART OF THE COMPENSATION TO WHICH HE OR SHE IS OTHERWISE ENTITLED. THE NON-
5 FEDERAL ENTITY MUST REPORT ALL SUSPECTED OR REPORTED VIOLATIONS TO THE FEDERAL
6 AWARDING AGENCY.

7 (E) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708). WHERE
8 APPLICABLE, ALL CONTRACTS AWARDED BY THE NON-FEDERAL ENTITY IN EXCESS OF \$100,000
9 THAT INVOLVE THE EMPLOYMENT OF MECHANICS OR LABORERS MUST INCLUDE A PROVISION FOR
10 COMPLIANCE WITH 40 U.S.C. 3702 AND 3704, AS SUPPLEMENTED BY DEPARTMENT OF LABOR
11 REGULATIONS (29 CFR PART 5). UNDER 40 U.S.C. 3702 OF THE ACT, EACH CONTRACTOR MUST
12 BE REQUIRED TO COMPUTE THE WAGES OF EVERY MECHANIC AND LABORER ON THE BASIS OF A
13 STANDARD WORK WEEK OF 40 HOURS. WORK IN EXCESS OF THE STANDARD WORK WEEK IS
14 PERMISSIBLE PROVIDED THAT THE WORKER IS COMPENSATED AT A RATE OF NOT LESS THAN ONE
15 AND A HALF TIMES THE BASIC RATE OF PAY FOR ALL HOURS WORKED IN EXCESS OF 40 HOURS IN
16 THE WORK WEEK. THE REQUIREMENTS OF 40 U.S.C. 3704 ARE APPLICABLE TO CONSTRUCTION
17 WORK AND PROVIDE THAT NO LABORER OR MECHANIC MUST BE REQUIRED TO WORK IN
18 SURROUNDINGS OR UNDER WORKING CONDITIONS WHICH ARE UNSANITARY, HAZARDOUS OR
19 DANGEROUS. THESE REQUIREMENTS DO NOT APPLY TO THE PURCHASES OF SUPPLIES OR
20 MATERIALS OR ARTICLES ORDINARILY AVAILABLE ON THE OPEN MARKET, OR CONTRACTS FOR
21 TRANSPORTATION OR TRANSMISSION OF INTELLIGENCE.

22 (F) RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. IF THE FEDERAL
23 AWARD MEETS THE DEFINITION OF “FUNDING AGREEMENT” UNDER 37 CFR §401.2 (A) AND THE
24 RECIPIENT OR SUBRECIPIENT WISHES TO ENTER INTO A CONTRACT WITH A SMALL BUSINESS FIRM
25 OR NONPROFIT ORGANIZATION REGARDING THE SUBSTITUTION OF PARTIES, ASSIGNMENT OR
26 PERFORMANCE OF EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK UNDER THAT
27 “FUNDING AGREEMENT,” THE RECIPIENT OR SUBRECIPIENT MUST COMPLY WITH THE
28 REQUIREMENTS OF 37 CFR PART 401, “RIGHTS TO INVENTIONS MADE BY NONPROFIT
29 ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS AND
30 COOPERATIVE AGREEMENTS,” AND ANY IMPLEMENTING REGULATIONS ISSUED BY THE
31 AWARDING AGENCY.

1 (G) CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL
2 ACT (33 U.S.C. 1251-1387), AS AMENDED—CONTRACTS AND SUBGRANTS OF AMOUNTS IN
3 EXCESS OF \$150,000 MUST CONTAIN A PROVISION THAT REQUIRES THE NON-FEDERAL AWARD
4 TO AGREE TO COMPLY WITH ALL APPLICABLE STANDARDS, ORDERS OR REGULATIONS ISSUED
5 PURSUANT TO THE CLEAN AIR ACT (42 U.S.C. 7401-7671Q) AND THE FEDERAL WATER
6 POLLUTION CONTROL ACT AS AMENDED (33 U.S.C. 1251-1387). VIOLATIONS MUST BE
7 REPORTED TO THE FEDERAL AWARING AGENCY AND THE REGIONAL OFFICE OF THE
8 ENVIRONMENTAL PROTECTION AGENCY (EPA).

9 (H) DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)—A CONTRACT
10 AWARD (SEE 2 CFR 180.220) MUST NOT BE MADE TO PARTIES LISTED ON THE
11 GOVERNMENTWIDE EXCLUSIONS IN THE SYSTEM FOR AWARD MANAGEMENT (SAM), IN
12 ACCORDANCE WITH THE OMB GUIDELINES AT 2 CFR 180 THAT IMPLEMENT EXECUTIVE
13 ORDERS 12549 (3 CFR PART 1986 COMP., P. 189) AND 12689 (3 CFR PART 1989 COMP., P.
14 235), “DEBARMENT AND SUSPENSION.” SAM EXCLUSIONS CONTAINS THE NAMES OF PARTIES
15 DEBARRED, SUSPENDED, OR OTHERWISE EXCLUDED BY AGENCIES, AS WELL AS PARTIES
16 DECLARED INELIGIBLE UNDER STATUTORY OR REGULATORY AUTHORITY OTHER THAN
17 EXECUTIVE ORDER 12549.

18 (I) BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)—CONTRACTORS THAT APPLY OR BID
19 FOR AN AWARD EXCEEDING \$100,000 MUST FILE THE REQUIRED CERTIFICATION. EACH TIER
20 CERTIFIES TO THE TIER ABOVE THAT IT WILL NOT AND HAS NOT USED FEDERAL APPROPRIATED
21 FUNDS TO PAY ANY PERSON OR ORGANIZATION FOR INFLUENCING OR ATTEMPTING TO INFLUENCE
22 AN OFFICER OR EMPLOYEE OF ANY AGENCY, A MEMBER OF CONGRESS, OFFICER OR EMPLOYEE OF
23 CONGRESS, OR AN EMPLOYEE OF A MEMBER OF CONGRESS IN CONNECTION WITH OBTAINING ANY
24 FEDERAL CONTRACT, GRANT OR ANY OTHER AWARD COVERED BY 31 U.S.C. 1352. EACH TIER
25 MUST ALSO DISCLOSE ANY LOBBYING WITH NON-FEDERAL FUNDS THAT TAKES PLACE IN
26 CONNECTION WITH OBTAINING ANY FEDERAL AWARD. SUCH DISCLOSURES ARE FORWARDED
27 FROM TIER TO TIER UP TO THE NON-FEDERAL AWARD.

28 (J) SEE §200.322 PROCUREMENT OF RECOVERED MATERIALS.
29 [78 FR 78608, DEC. 26, 2013, AS AMENDED AT 79 FR 75888, DEC. 19, 2014]