
# How to Use This Sample Policy

**Model Procurement Policy for Expenditures of Federal Financial Assistance**

### **DISCLAIMER and Policy Overview**

**Comment**: This model policy is intended to help local government recipients and sub-recipients of federal awards to comply with the Uniform Guidance procurement requirements set forth in [2 C.F.R. §§ 200.317–.328.](https://www.ecfr.gov/current/title-2/part-200/subject-group-ECFR45ddd4419ad436d) This policy has been updated to incorporate the 2024 updates to the Uniform Guidance. Local governments should review their own local policies and consult with their attorneys to make modifications as needed to conform to local purchasing practices. Local governments also should consult each federal award’s terms and conditions to determine whether additional procurement requirements apply.

The use of this model policy does not create an attorney-client relationship between the local government and the University of North Carolina (UNC) School of Government. This policy is not intended to replace or supersede North Carolina state procurement law or local policy. In the case of a conflict in law, the more restrictive requirement shall govern.

**NOTE**: The comments in red highlight areas in which the local government may want to insert procedures specific to that unit’s procurement process. These comments should be deleted before policy adoption.

**NOTE:** In addition to this policy, local governments are also required to adopt written standards of conduct covering conflicts of interest in the administration of federal awards.[[1]](#footnote-1) This model procurement policy does not include the federal conflict of interest provisions, but it assumes the unit has adopted a federal COI policy. See Section 2, which references the adoption of a COI policy.

Questions regarding this model policy may be directed to faculty member Rebecca Badgett at rbadgett@sog.unc.edu.

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**Model Federal Procurement Policy**

# Section 1: Purpose

**Application of Policy**. The purpose of this policy is to establish guidelines for the procurement of goods, apparatus, supplies, materials, equipment, professional and non-professional services, and construction or repair work that is funded, in whole or in part, with federal financial assistance.

The [LOCAL GOVERNMENT] shall comply with the standards established in this policy, as well as with state law and any other policies and procedures adopted by the [COUNTY/CITY/TOWN (hereinafter “UNIT”][[2]](#footnote-2). The requirements of the Policy also apply to any subrecipient of federal financial assistance. In the case of a conflict in governing law or local policy, the [UNIT] shall follow the most restrictive rule.

**Compliance with Federal Law**. Unless otherwise directed in writing by the federal awarding agency, or by a state agency acting as a passing-through entity, all procurements that involve the expenditure of federal financial assistance (federal awards) shall be conducted in accordance with the federal procurement requirement identified in 2 C.F.R. §§ 200.318–.327, of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Uniform Guidance).

# Section 2: Code of Conduct

The [UNIT] has adopted standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents who are engaged in the selection, award, and administration of federal award contracts.[[3]](#footnote-3) (Local governments must adopt a separate federal conflict of interest policy.)

# Section 3: Pre-Solicitation Requirements

Prior to any procurement transaction, the following pre-solicitation requirements shall be considered.

1. **No Evasion**. No contract may be intentionally divided into two or more separate purchases with the intent to avoid federal or state competitive procurement requirements.
2. **Interlocal Agreements**. The [UNIT] shall explore the feasibility of entering into state and local intergovernmental agreements, cooperative agreements, or inter-entity agreements when procuring common goods and shared services. Competition requirements may be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.[[4]](#footnote-4)
3. **Surplus Property**. The [UNIT] shall avoid the acquisition of unnecessary or duplicative items and shall explore the feasibility of purchasing federal surplus property in lieu of purchasing new equipment and property.[[5]](#footnote-5)
4. **Value Engineering**. The [UNIT] shall consider opportunities to use value engineering in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering involves analysing each contract item or task to ensure it is essential and is provided at the overall lowest cost.[[6]](#footnote-6)
5. **Domestic Preferences**. To the greatest extent practicable, the [UNIT] will 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.[[7]](#footnote-7)
6. **Contracting with Minority-Owned, Women-Owned, Veteran-Owned, Small Businesses and Labor Surplus Firms**. When possible, take steps to ensure assure that minority businesses, small businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms are considered for contracts.[[8]](#footnote-8) Consideration means:

a. these business types are included on solicitation lists and solicited whenever they are deemed elegible as potential sources;

b. dividing, when economically feasible, project requirements into separate procurements to permit maximum participation;

c. establishing delivery schedules that encourage participation;

d. identifying firms through the U.S. Small Business Administration (SBA)[[9]](#footnote-9) and the U.S. Department of Commerce’s Minority Business Development Agency[[10]](#footnote-10) of the Department of Commerce;

e. requiring the prime contractor, if subcontracts are to be awarded, to make reasonable efforts to apply this section to subcontracts.[[11]](#footnote-11)

1. **Cost or Price Analysis**. Prior to awarding a contract, [UNIT] shall perform a cost or price analysis in connection with every procurement above the Simplified Acquisition Threshold, including contract modifications.[[12]](#footnote-12) The method and degree of analysis will vary depending on the facts. The independent estimate shall be conduced *before* receiving bids or proposals.
	1. A price analysis involves the evaluation of the total proposed price without an evaluation of its separate cost elements and proposed profit. A price analysis is used to verify that the overall price for a specific item is fair and reasonable.
	2. A cost analysis involves the evaluation of the separate elements that make up the total cost of a contract (e.g., labor, materials, profit, etc.). The cost analysis is required for new contracts and contract modifications or change orders, even when the change order results in a lower contract price. [[13]](#footnote-13)
2. **Procurement of Recovered Materials.** [Recipients and Subrecipients that are a state agency or a policical subdivision of a state] shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.[[14]](#footnote-14)

# Section 4: Solicitation Requirements

1. **Full and Open Competition**. Procurements shall be conducted in a manner that provides full and open competition to ensure objective supplier performance and eliminate unfair competitive advantage.[[15]](#footnote-15) The [UNIT] shall remain alert to organizational conflicts which would jeopardize the negotiation process and limit competition. Examples of situations that may restrict competition include:

a. placing unreasonable requirements on firms in order for them to qualify to do business;

b. requiring unnecessary experience and excessive bonding or encourage or participate in non-competitive practices among firms or affiliated companies;

c. awarding non-competitive consultant retainer contracts except as expressly provided by funding-source regulations;

d. specifying (1) that only a “brand name” product be used instead of allowing an “equivalent product” to be offered, though a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement or (2) the specific features, performance, or other relevant requirements of the named brand that must be met by offerors; or

e. any arbitrary actions that limit or restrict competition. [[16]](#footnote-16)

1. **Contractors Excluded from Bidding**. 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 are excluded from competing for the underlying procurement contract.[[17]](#footnote-17)
2. **Prequalification**. The [UNIT] shall 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. The prequalified list shall be routinely updated. The [UNIT] shall consider objective dactors that evaluate price and cost to mazimize competition. Potential bidders shall not be precluded from qualifying during the solicitation period.[[18]](#footnote-18)
3. **Product Descriptions.** All solicitations shall incorporate a clear and accurate description of the technical requirements for the property, equipment, or service to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the property, equitment, or service and, when necessary, the minimum essential characteristics and standards to which the property, equipment, or service must conform. it shall conform if it is to satisfy its intended use.

Detailed product specifications shall be avoided whenever possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description of features may be used to define the performance or other salient requirements of procurement. The solicitation shall identify any additional requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.[[19]](#footnote-19)

# Section 5: Bidding Requirements

[NOTE: This section focuses on the federal procurement methods and does not incorporate state law bidding requirements. See Appendix \_\_ for a model procurement policy that was drafted by former SOG faculty member Norma Houston and combines the federal and state law procurement requirements for purchase contracts, service contracts, and construction and repair. Importantly, the Uniform Guidance requires local governments competitively bid service contracts when the contract will be paid, in whole or in part, with a federal award/grant.]

The [UNIT] shall comply with the procurement methods set forth in the Uniform Guidance at 2 CFR § 200.320 when entering into purchase, service, and construction contracts and repair contracts that will be funded, in whole or in part, with a federal award. The [UNIT] shall also comply with state law and local policy when soliciting bids and awarding contracts. In event of a conflict of law, the most restrictive requirement will be followed.

1. Informal Procurement Methods: When the value of the procurement will not exceed the simplified acquisition threshold (SAT) of $250,000, the [UNIT] may conduct the procurement using one of the informal procurement methods: micropurchases or simplied acquisitions.
	1. Micropuchase: (contracts costing less than $10,000)

The micropurchase procurement method may be used when the aggregate amount of the purchase/contract is below the micropurchase threshold ($10,000).[[20]](#footnote-20) Micropurchases may be awarded without competition provided the price term is considered to be fair and reasonable based on market conditions. When making a micropurchase, the [UNIT] shall:

* + 1. Obtain price or rate quote from at least one qualified vendor or contractor;
		2. Document in writing that the price or rate quote is fair and reasonable; and
		3. To the extent practical, distribute micropurchases equitably among qualified suppliers.[[21]](#footnote-21)
	1. **Simplied Aquisitions:** (Contracts above the micropurchase threshold - $250,000)

The implified acquisition method is used for procurements in which the aggregate dollar amount is higher than the micropurchase threshold but does not exceed the SAT (currently $250,000). This method does not require formal advertisement.

* + 1. Obtain an adequate number of price or rate quotations from vendors or contractors (quotes may be received in any format, including email, phone, fax);
		2. Maintain documentation of price the price and rate quotes; and
		3. Award the contract on to the lowest cost responsible bidder.[[22]](#footnote-22)
1. **Formal Procurement Methods:** For procurements that cost $250,000 or more, the [UNIT] shall conduct the procurement in accordance with one of the formal procurement methods: sealed bids or proposals.
2. **Sealed Bids**: (Contracts costing $251,000 or more)

The sealed bid method shall be the [UNIT’s] preferred method for procuring construction and repair contracts, provided the following conditions are present: (1) a complete, adequate, and realistic specification or purchase description is available; (2) two or more responsible bidders are willing and able to compete effectively for the business; and (3) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

When the sealed bid method is used, the [Unit] shall satisfy the following conditions:

* + 1. Solicit sealed bids from an adequate number of qualified sources, and provide bidders with sufficient time to prepare a response prior to the date set for bid opening. [The UG does not define “adequate number” nut 3 should be sufficient to satisfy the UG and state law]
		2. Publicly advertise the Invitation for Bid (IFB).
		3. When possible, solicit price quotes from M/WBE/Veteran vendors and suppliers as provided under 2 C.F.R. § 200.321.
		4. Include in the IFB any specifications and pertinent attachments, and clearly define the items or services in order to allow the bidder to properly respond.
		5. Publicly open bids at the time and place prescribed in the IFB.
		6. Award a firm, fixed-price contract in writing to the lowest responsive and responsible bidder.
		7. Document and provide a justification for all bids it rejects.[[23]](#footnote-23)
	1. **Competitive Proposals**:(Contracts costing $250,000 or more for which the sealed bid method is not appropriate)

The [UNIT] shall use the competitive proposal method when the cost of the contract is above $250,000 and when the sealed bids method is not appropriate. The [UNIT] is required to use the proposals method for qualification-based procurements in the selection of architectural and engineering (A/E) professional services. In the procurement of A/E professional services, the price will be negotiated after the most qualified firm is selected. When the competitive proposals method is used, the [Unit] shall satisfy the following conditions:

* + 1. Publicly advertise the request for proposal (RFP) or request for qualifications (RFQ). Formal advertisement in a newspaper is not required provided the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
		2. When possible consider M/WBE/Veteran vendors and suppliers as provided under 2 C.F.R. § 200.321.
		3. Identify evaluation criteria and relative importance of each criterion (criteria weight) in the RFP or RFQ.
		4. Consider all responses to the publicized RFP to the maximum extent practical.
		5. Establish a written method for conducting technical evaluations of proposals and selecting the winning firm.
		6. Award the contract on a fixed-price or cost-reimbursement basis to the most responsible firm with the proposal that is most advantageous to the [UNIT], taking into account price and other factors identified in the proposal. Price may not be an evaluation factor for (A/E) service contracts.
		7. **A/E Service Contracts**: For qualification-based procurement in the selection of architectural and engineering (A/E) professional services, qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. Price shall not be solicited in the RFQ, or used as an evaluation criterion, in awarding A/E professional service contracts.[[24]](#footnote-24)
1. **Noncompetitive Procurements**. Noncompetitive procurements are allowed only under the following conditions.
	* 1. **Micropurchases**. The aggregate dollar amount of the procurement does not exceed the micropurchase threshold.
		2. **Sole source**. Item is available from only one source. [PURCHASING/REQUESTING DEPARTMENT] shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.
		3. **Public Exigency or Emergency**. A public exigency or emergency will not permit delay the delay resulting from competitive bidding.
		4. **Agency Approval**. A federal agency or pass-through entity provides written approval.
		5. **Inadequate Competition**. A contract may be awarded without competitive bidding when competition is determined to be inadequate after a minimum of two attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.[[25]](#footnote-25)

# Section 6: Contract Award

1. **Responsible Contractors**. Contracts shall only be awarded to responsible, responsive contractors/firms possessing the ability to perform successfully under the terms and conditions of the proposed procurement. “Responsible” refers to the character or quality of the bidder, with consideration being given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. “Responsive” refers to the bidder’s compliance with all required specifications in the formal solicitation.

The [UNIT] shall consider contractor integrity, public policy compliance, proper classification of employees,[[26]](#footnote-26) past performance records, and financial and technical resources when conducting a procurement transaction.[[27]](#footnote-27) [INSERT POSITION] shall be responsible for maintaining documentation of this consideration.

1. **Suspension and Debarment**. Before awarding a contract, the [UNIT/POSITION/RESPONSIBLE PARTY] shall verify that a potential contractor is not debarred or suspended using the System for Award Management (SAM.gov).If a contractor has been debarred, suspended, or is otherwise excluded from participation in a federal award program, the contractor may not be awarded the contract. The [DEPARTMENT/POSITION] shall maintain documentation of this verification.
2. **Bid Rejections**. Bid submissions and/or proposals may be deemed non-responsive, or contractors may be determined to be non-responsible, for any sound documented reason(s). The documentation will state the reason(s) why each bidder failed to satisfy the responsive, responsible contractor standard for a particular procurement.
3. **Estimated Costs**. The [UNIT] shall use estimated costs in negotiating contract terms only to the extent that the cost estimates included in negotiated prices are allowable under the 2 C.F.R. Part 200, Subpart E, “Cost Principles.”[[28]](#footnote-28) [Units should have a separate Cost Principles policy that covers expenditures of federal award funds.]
4. **Bonding Requirements**. A federal agency or pass-through entity may determine it will accept the recipient or subrecipient’s bonding policy for construction or facility improvement contracts or subcontracts avoce the simplified acquisition threshold ($250,000). If such determination has not been made,[UNIT] shall require that contractors meet the minimum bonding requirements listed below.

To be submitted with the bidding documents:

A *bid guarantee* from each bidder equivalent to five percent (5%) of the bid price*.*[[29]](#footnote-29)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 shall, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

To be submitted at the time of contract award:

A *performance bond* on the part of the contractor that is for 100 percent (100%) of the contract price.[[30]](#footnote-30) A performance bond is a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

 A *payment bond* on the part of the contractor that is for 100 percent (100%) of the contract price. A payment bond is a bond 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 under the contract.[[31]](#footnote-31)

# Section 7: Prohibited Contracts

1. **“Costs-Plus-a-Percentage-of-Costs” and “Percentage of Construction Costs” Contracts**. A “costs plus a percentage of cost” contract and a “percentage of construction cost” contract are prohibited.[[32]](#footnote-32)
2. **Time-and-Materials Contracts Disfavored**. The [UNIT] shall only enter into time and materials contracts if it has determined in writing that no other contract type is suitable for a given procurement. Time and materials contracts prescribe cost as the sum of (a) actual cost of materials and (b) direct labor hours charges at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Use of time and materials contracts shall require an established price ceiling to ensure that the agreement does not allow for an open-ended contract price with no profit incentive for the contractor to control costs or labor efficiency. These contracts shall be subject to frequent oversight to ensure that the contractor employs efficient methods and effective cost controls.[[33]](#footnote-33)

# Section 8: Contract Administration

1. **Contract Oversight**. The [DEPARTMENT/POSITION] shall provide proper oversight to ensure that contractors and firms perform the contract requirements in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. **Contract Clauses**. All procurement contracts shall contain the applicable provisions described in Appendix II to 2 C.F.R. Part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.”[[34]](#footnote-34)
3. **Record Retention**. The [UNIT] shall maintain records sufficient to detail the history of each procurement, including the rationale for the method of procurement and selection of contract type, the basis for the contractor selection or rejection, and the basis for the contract price.[[35]](#footnote-35) These records should include, but are not limited to, supporting documentation showing the rationale for the procurement method; written price or rate quotations, such as catalog price, online price, email or written quotes, copies of advertisements, requests for proposals, and bid sheets or bid proposal packets;  bid rejection and award letters; purchase orders; executed contracts; and any other supporting documentation or financial records relating to the procurement transaction.
4. **Retention Period**. Unless a federal award prescribes a different record retention period, all financial records, supporting documents, statistical records, and all other records pertinent to a federal award shall be retained for a period of three years from the date of submission of the finalfinancial report. For federal awards that are renewed quarterly or annually, three years from the date of the submission of the quarterly or annual financial report, respectively.[[36]](#footnote-36) An exception to the standard retention period may exist if any of the following circumstances is satisfied:
5. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
6. When notified in writing by the federal awarding agency or pass-through entity that the retention period has been extended.
7. Records for real property and equipment shall be retained for three years after final disposition.
8. Retention requirement does not apply when records are transferred to or maintained by the federal agency.
9. Records for program income earned after th period of performance must be retained for three years from the end of the fiscal year in which the program income is earned.

# Section 9: Awarding Agency or Pass-Through Entity Review

1. **Agency Review**. Upon request of the awarding federal agency, the [UNIT] shall make available technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for acquisition.[[37]](#footnote-37) The [UNIT] shall make the pre-procurement and procurement documents available upon request of the federal awarding agency or pass-through entity when any of the circumstances set forth in 2 C.F.R. § 200.325(b) are satisfied.[[38]](#footnote-38)

# Section 10: Compliance with Policy Provisions

1. **Penalties Imposed by Federal Awarding Agency.** If it has been determined that the [UNIT] has failed to comply with the U.S. Constitution, federal statutes, regulations, or the terms and conditions of a federal award, the federal awarding agency or pass-through entity may impose additional conditions as described in [2 C.F.R. § 200.208](https://www.ecfr.gov/current/title-2/section-200.208). In cases in which noncompliance cannot be remedied by the imposition of additional conditions, the federal awarding agency or pass-through entity may take one or more of the following actions: temporarily withhold cash payments, disallow costs, suspend or terminate the award, initiate suspension or debarment proceedings, withhold further federal awards for the project or program, or take other remedies legally available.[[39]](#footnote-39)

**Appendix A**

**NOTE: Appendix A is an excerpt from the 2018 model procurement policy drafted by former UNC School of Government faculty member Norma Houston. It shows how the Uniform Guidance bidding methods AND the North Carolina state law bidding requirements function together based on contract type and price. The purchasing department may use Appendix A as a reference, and.or it may be incoproorated into the UG procurement policy.**

**Specific Procurement Procedures**

Either the Purchasing Department or the Requesting Department shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

1. **Service Contracts** (except for A/E professional services) and **Purchase Contracts** **costing less than $10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:
2. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
3. To the extent practicable, purchases must be distributed among qualified suppliers.
4. **Service Contracts costing up to $250,000** (except for A/E professional services) and **Purchase Contracts** **costing $10,000 up to $90,000** shall be procured using the Uniform Guidance “simplified acquisition” procedure (2 C.F.R. § 200.320(b)) as follows:
	1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
	2. When possible, solicite participation from M/WBE/veteran vendors and suppliers as suggested under 2 C.F.R. § 200.321.
	3. Cost or price analysis is not required prior to soliciting bids.
	4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
	5. Award the contract to the lowest responsive, responsible bidder.
5. **Purchase Contracts** **costing $90,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:
	1. Cost or price analysis is required prior to soliciting bids.
	2. Complete specifications or purchase descriptions must be made available to all bidders.
	3. The bid must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
	4. When possible, solicite participation from M/WBE/veteran vendors and suppliers as suggested under 2 C.F.R. § 200.321.
	5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
	6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for “sound documented reasons.”

***Note Regarding Service Contracts Costing $90,000 up to $250,000:***  *Local government service contracts are not subject to state competitive bidding requirements. If a local government does not require competitive proposals (RFPs) for service contracts under its local policy, it may choose to follow the UG simplified acquisition procedure for service contracts costing $10,000 up to $250,000, and then follow the UG sealed bid or competitive proposal method for service contracts costing $250,000 or more. If the local policy regarding service contracts is more restrictive, the local policy should be followed.*

1. **Service Contracts** (except for A/E professional services) **costing $250,000 and above** may be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)) when the “sealed bid” procedure is not appropriate for the particular type of service being sought. The procedures are as follows:
	1. A Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
	2. When possible, solicite participation from M/WBE/veteran vendors and suppliers as suggested under 2 C.F.R. § 200.321.
	3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
	4. Consider all responses to the publicized RFP to the maximum extent practical.
	5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
	6. Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. Governing board approval is not required.
	7. Award the contract on a fixed-price or cost-reimbursement basis.
2. **Construction and repair contracts costing less than $10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:
3. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
4. To the extent practicable, contracts must be distributed among qualified suppliers.
5. **Construction and repair contracts costing $10,000 up to $250,000** shall be procured using the Uniform Guidance “simplified aquisition” procedure (2 C.F.R. § 200.320(b)) as follows:
6. Obtain price or rate quotes from an “adequate number” of qualified sources (“adequate number” is not defined)
7. When possible, solicite participation from M/WBE/veteran vendors and suppliers as suggested under 2 C.F.R. § 200.321.
8. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
9. Award the contract on a fixed-price or not-to-exceed basis.
10. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.
11. Maintain documentation of the bids.
12. **Construction and repair contracts costing $250,000 up to $500,000** shall be procured using the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) as follows:
	1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
	2. Complete specifications must be made available to all bidders.
	3. Publically advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
	4. When possible, solicit participation from M/WBE/veteran vendors and suppliers as provided under 2 C.F.R. § 200.321.
	5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
	6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
	7. Award the contract on a firm fixed-price basis.
	8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for “sound documented reasons.”
13. **Construction and repair contracts** **costing $500,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:
	1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
	2. Complete specifications must be made available to all bidders.
	3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
	4. When possible, solicit participation from M/WBE/veteran vendors and suppliers as provided under 2 C.F.R. § 200.321.
	5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
	6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price is required of the winning bidder.
	7. Award the contract on a firm fixed-price basis.
	8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for “sound documented reasons.”
14. **Construction or repair contracts involving a building costing $300,000 and above** must comply with the following additional requirements under state law:
15. Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
16. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
17. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).
18. **Contracts for Architectural and Engineering Services costing under $250,000** shall be procured using the state “Mini-Brooks Act” requirements (G.S. 143-64.31) as follows:
19. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
20. When possible, solicit participation from M/WBE/veteran vendors and suppliers as provided under 2 C.F.R. § 200.321.
21. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
22. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
23. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
24. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.
25. **Contracts for Architectural and Engineering Services costing $250,000 or more** shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5)) as follows:
26. Publicly advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
27. When possible, solicit participation from M/WBE/veteran vendors and suppliers as provided under 2 C.F.R. § 200.321.
28. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
29. Proposals must be solicited from an “adequate number of qualified sources” (an individual federal grantor agency may issue guidance interpreting “adequate number”).
30. Must have a written method for conducting technical evaluations of proposals and selecting the best-qualified firm.
31. Consider all responses to the publicized RFQ to the maximum extent practical.
32. Evaluate the qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
33. Price cannot be a factor in the initial selection of the most qualified firm.
34. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
35. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.
1. [2 C.F.R. § 200.318](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318). A model federal Conflicts of Interest Policy is linked in Kara Millonzi’s blog post  [ARP Basics](https://zoom.us/j/95481909044?pwd=UlE2VHNhN2luS0JEYTJqeTZTMFRWdz09), which is available on the Coates’ Canons Local Government Law Blog. [↑](#footnote-ref-1)
2. The term “UNIT” is used as a placeholder. Local governments should insert county, city, town, or village or specify a specific department or position that is responsible for performing the specific requirement. [↑](#footnote-ref-2)
3. [2 C.F.R. § 200.318](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.318). [↑](#footnote-ref-3)
4. [2 C.F.R. § 200.318(e)](https://www.ecfr.gov/current/title-2/part-200/section-200.318#p-200.318(e)). [↑](#footnote-ref-4)
5. [2 C.F.R. § 200.318(f).](https://www.ecfr.gov/current/title-2/part-200/section-200.318#p-200.318(f)) [↑](#footnote-ref-5)
6. [2 C.F.R. § 200.318(g)](https://www.ecfr.gov/current/title-2/part-200/section-200.318#p-200.318(g)); Value engineering is a systematic and creative analysis of each contract item or task undertaken to ensure that its essential function is provided at the overall lowest cost. [↑](#footnote-ref-6)
7. [2 C.F.R. § 200.322(a);](https://www.ecfr.gov/current/title-2/part-200/section-200.322#p-200.322(a)) The requirements of this section shall be included in all subawards, including all contracts and purchase orders for work or products under the federal award. [↑](#footnote-ref-7)
8. 2 C.F.R. 200.321. A “small business” is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the Small Business Administration criteria and size standards at [13 C.F.R. Part 121](https://www.ecfr.gov/current/title-13/part-121). A “women’s business enterprise” (1) is at least 51 percent owned by one or more women or, in the case of a publicly owned business, has one or more women owning at least 51 percent of the stock and (2) has one or more women in control of management and daily operations. A “minority business” (1) is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, has one or more minority group members owning at least 51 percent of the stock and (2) has one or more minority group member in control of management and daily operations. A “labor surplus area” is an area with a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the national average over the same period. A “labor surplus area firm” is one that, together with its first-tier subcontractors, will perform substantially in labor surplus areas, as defined by the U.S. Department of Labor’s Employment and Training Administration. The Department of Labor’s list of labor surplus areas is available on-line at [https://www.doleta.gov/programs/lsa](https://www.dol.gov/agencies/eta/lsa). [↑](#footnote-ref-8)
9. For more information, visit the SBA’s website at <https://www.sba.gov/>. [↑](#footnote-ref-9)
10. For more information, visit the Minority Business Development Agency’s website at <https://www.mbda.gov/>. [↑](#footnote-ref-10)
11. [2 C.F.R. § 200.321](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=b32a3ba8949d39f8518380a0b28aba46&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_1321); [45 C.F.R. § 75.330](https://www.ecfr.gov/cgi-bin/text-idx?node=pt45.1.75#se45.1.75_1330). [↑](#footnote-ref-11)
12. [2 C.F.R. § 200.324.](https://www.ecfr.gov/current/title-2/section-200.324) [↑](#footnote-ref-12)
13. Price analysis involves the examination and evaluation of a proposed price without an evaluation of its separate components (cost and profit). For example, the comparison of competing offers or the comparison of quoted prices with independent estimates falls within a price analysis. Cost analysis involves the review and evaluation of the separate cost elements, such as labor hours, overhead, materials, etc., and the proposed profit in order to determine a fair and reasonable price. This analysis is usually used to establish the basis for negotiating (1) contract prices for procurement by request for proposal, (2) contract modifications, and (3) in any other case where price analysis by itself does not ensure price reasonableness. [↑](#footnote-ref-13)
14. [2 C.F.R. § 200.323.](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.323) [↑](#footnote-ref-14)
15. 2 C.F.R. 200.219(f) (This section was added to the 2024 UG update and will take effect 10/01/2024). To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award. [↑](#footnote-ref-15)
16. [2 C.F.R. § 200.319(b).](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=b32a3ba8949d39f8518380a0b28aba46&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_1319) [↑](#footnote-ref-16)
17. [2 C.F.R. § 200.319(b).](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=b32a3ba8949d39f8518380a0b28aba46&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_1319) [↑](#footnote-ref-17)
18. [2 C.F.R. § 200.319(e).](https://www.ecfr.gov/current/title-2/part-200#p-200.319(e)) [↑](#footnote-ref-18)
19. [C.F.R. § 200.319(d).](https://www.ecfr.gov/current/title-2/part-200#p-200.319(d)(2)) [↑](#footnote-ref-19)
20. [2 C.F.R. § 200.320(a)(1](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.320)); the current micropurchase threshold is set at $10,000. A local government may self-certify a higher threshold consistent with state law or a local policy may set a lower threshold amount. [↑](#footnote-ref-20)
21. [2 CFR § 200.320(a)(1)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.320). [↑](#footnote-ref-21)
22. [2 CFR § 200.320(a)(2)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.320); the Uniform Guidance does not define "adequate number” of qualified sources. Some federal agencies have issued guidance assigning specific numbers to this requirement. For example, FEMA has interpreted "adequate number" to mean receiving at least 3 quotes. Departments should consult with their federal granting agency to determine if that agency has issued guidance defining “adequate number.” Keep in mind that state law requires purchase contracts costing $90,000 or more are subject to state law formal bidding requirements, and, as such, three quotes must be received for purchases in the formal bidding range. The other state law formal bidding requirements also apply to purchase contracts above the $90,000 threshold. *See* G.S. 143-129. [↑](#footnote-ref-22)
23. [2 CFR § 200.320(d)(1)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.320); 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. [↑](#footnote-ref-23)
24. [2 CFR § 200.320(b)(2).](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.320) [↑](#footnote-ref-24)
25. [2 CFR § 200.320(c)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.320). [↑](#footnote-ref-25)
26. See the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8. [↑](#footnote-ref-26)
27. The requirement to consider the responsible contractor factors is part of the OMB 2024 update to the Uniform Guidance. Units should document that they considered these factors in determining if a contractor is responsible. This will be required for federal awards made on or after October 1, 2024. [↑](#footnote-ref-27)
28. [2 C.F.R. § 200.324(c)](https://www.ecfr.gov/current/title-2/part-200/section-200.324#p-200.324(c)). Units may reference their own cost principles policy. For example, a unit may want to limit the use of estimated costs to A/E contracts that are federally funded. [↑](#footnote-ref-28)
29. [2 C.F.R. § 200.325(a)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#p-200.325(a)). [[Deleted bc repetitive of text]] [↑](#footnote-ref-29)
30. [2 C.F.R. § 200.325(b)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#p-200.325(b)). [[Same comment as immed. above]] [↑](#footnote-ref-30)
31. [2 C.F.R. § 200.326.](https://www.ecfr.gov/current/title-2/section-200.326) [↑](#footnote-ref-31)
32. [2 C.F.R. § 200.324(d).](https://www.ecfr.gov/current/title-2/part-200/section-200.324#p-200.324(d)) [↑](#footnote-ref-32)
33. [2 C.F.R. § 200.318(j)](https://www.ecfr.gov/current/title-2/part-200/section-200.318#p-200.318(j)). [↑](#footnote-ref-33)
34. [2 C.F.R. § 200.327](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.327); [Appendix II to 2 C.F.R. Part 200.](https://www.ecfr.gov/cgi-bin/text-idx?SID=32d7a2a3709bc9fbec1663077a32ed5f&mc=true&node=pt2.1.200&rgn=div5#ap2.1.200_1521.ii) For assistance with the Appendix II contract clauses, see the document [Sample Contract Terms Compliance with the Uniform Guidance Procurement Requirements](https://canons.sog.unc.edu/2023/01/arp-basics-resources/). [↑](#footnote-ref-34)
35. [2 C.F.R. 200.318(i).](https://www.ecfr.gov/current/title-2/part-200/section-200.318#p-200.318(i)) [↑](#footnote-ref-35)
36. [2 C.F.R. 200.334.](https://www.ecfr.gov/current/title-2/section-200.334) Procurement records related to expenditures of Coronavirus State and Local Fiscal Recovery Funds pursuant to the American Rescue Plan Act must be retained for a period of five years. [↑](#footnote-ref-36)
37. [2 C.F.R. § 200.325(a).](https://www.ecfr.gov/current/title-2/part-200/section-200.325#p-200.325(a)) [↑](#footnote-ref-37)
38. [2 C.F.R. § 200.325(b)](https://www.ecfr.gov/current/title-2/part-200/section-200.325#p-200.325(b)). [↑](#footnote-ref-38)
39. [2 C.F.R. § 200.339](https://www.ecfr.gov/current/title-2/section-200.339). [↑](#footnote-ref-39)