

Business

Purchasing Procedures

PURCHASING

I. REQUIREMENTS APPLICABLE TO PURCHASES OF ALL GOODS AND SERVICES

A. Definition

For the purposes of this policy:

1. “Goods or service” includes, but is not limited to, portable classrooms, motor vehicles or materials and equipment, such as telephone systems, computers and copy machines.
2. “General services” include all services which result in a measurable end product that can be defined by bid specifications and all services used in the process of building or altering property (excluding architectural, engineering and other design services).
3. “Property” means real property or personal property.

B. Consultation with Municipality Regarding Contracts for Goods or Services, Including Insurance and Payroll Software

After going out to bid for a good or service and receiving submissions, if the local municipality uses such good or service, the Middletown Board of Education (the “Board”) shall consult with the legislative body of the municipality, or in the case of a municipality for which the legislative body is a town meeting or representative town meeting, the board of selectmen, and, if the equivalent level of such good or service is provided by the municipality through a municipal contract for a lower cost than the lowest qualified bid submission received by the Board, the Board will consider a cooperative agreement with the local municipality for the provision of such good or service.

Further, the Board will consult with the local municipality’s legislative body, or in the case of a municipality for which the legislative body is a town meeting or representative town meeting, the board of selectmen, prior to purchasing payroll processing or accounts payable software systems to determine whether such systems may be purchased or shared on a regional basis. When possible, the Board will consult with the local municipality’s legislative body, or in the case of a municipality for which the legislative body is a town meeting or representative town meeting, the board of selectmen, regarding the joint purchasing of property insurance, casualty insurance, and workers’ compensation insurance.

II. COMPETITIVE BIDDING PROCESS

A. Purchases Requiring Competitive Bidding Process (\$25,00 or More)

Purchases of goods or general services, including high technology equipment, expected to involve an expenditure of \$25,000 or more must be made by sealed competitive bid.

B. Bid Specifications

When competitive bidding is required, all requirements, terms and conditions describing and detailing the goods or general services to be purchased must be included in the bid specifications. The bid specifications should define the requirements for quality of materials, equipment and/or services to be procured, and as such, they should clearly and accurately reflect the required characteristics of the goods and services. The bid specifications should also include any vendor or contractor qualification requirements, a school district contact person responsible for all communications with prospective bidders, a requirement that all communications between the school district contact person and prospective bidders be in writing and, if the purchase will require entering into a contract, a draft contract whenever practical.

The Superintendent of Schools or his/her designee(s) shall develop the proposed bid specifications and other bid documents.

C. Advertising

A legal notice inviting sealed bids shall be published by the Superintendent of Schools or his/her designee at least once in a daily newspaper in the local municipality and on the Board's website. At least five (5) calendar days must intervene between the date of the last newspaper or website publication and the final date for submitting bids. The notice shall contain a general description of the goods or services being bid, the school district contact person and the day, hour and place of the bid opening and may contain other information relating to the bid including, but not limited to, where and when bid packages may be obtained.

D. Bid Openings and Awards

All bids, and bid security if applicable, must be submitted to the Superintendent of Schools or his/her designee in sealed envelopes or electronic - 2 -

submissions and show on the face of the envelopes or electronic submissions the bid number, the title of the bid and the bidder's name. All envelopes and electronic submissions will be date stamped as received.

All bids shall be opened in public and read aloud at the time stated in the legal notice. No bids shall be accepted, or opened, that were not submitted in compliance with the procedures set forth in the notice advertising the bid.

Within a reasonable time following the bid opening, the Superintendent of Schools or his/her

designee will tabulate and analyze the bids. The Superintendent shall, subject to the right of rejection, award the bid to the Lowest Responsible Qualified Bidder, as defined below. A building committee takes over responsibility from the Superintendent for projects over an amount set by the City of Middletown's Code of Ordinances.

A record of all bids submitted, giving the names of the bidders, the amounts of the bids and indicating the successful bidder, shall be preserved by the Superintendent of Schools or his/her designee in accordance with State law.

E. Bid Security

When, in the judgment of the Superintendent of Schools or his/her designee, bid security is advisable, all bids must be accompanied by security in one of the following forms - certified check, cashier's check, personal money order, letter of credit or bid bond. The requirement for, and the amount of, the security must be set forth in the bid advertisement. All security presented must show the City of Middletown as the payee.

F. Requirements Governing Bid Awards

The award shall be made to the bidder whose bid meets the requirements, terms and conditions contained in the bid specifications and is the lowest among those bidders possessing the skill, ability and integrity necessary for faithful performance of the work based on objective criteria considering past performance and financial responsibility (the "Lowest Responsible Qualified Bidder"), and after consideration of a cooperative agreement with the municipality as described in Section I.B, above.

In determining the Lowest Responsible Qualified Bidder the following criteria will be considered, as applicable:

- (1) The ability and capacity of the bidder to perform the work based on an evaluation of the character, integrity, reputation and experience of the bidder. Consideration shall be given to previous work performed by the bidder for the Board or for other agencies, including the quality and degree of satisfaction with the work performed.
- (2) The financial resources of the bidder and the bidder's ability to secure any required bonds and/or insurance.
- (3) Compliance by the bidder with all applicable federal, state and local laws, including any licensing requirements.
- (4) Delivery or completion time.
- (5) Cost.
- (6) Involvement in litigation.
- (7) The ability of a city-based bidder to match the lowest bidder in accordance with the city-based language included in the City of Middletown Code of Ordinances.

(8) The ability of a city-based vendor to match the lowest possible bidder of a state or cooperative competitive bidding process for the same goods or services.

Should a situation arise where it is impossible to distinguish between two bidders to identify the Lowest Responsible Qualified Bidder, and one of the bidders has its principal place of business located within the City of Middletown, the award will be made to the local bidder.

G. Rejection Of Bids

The Superintendent of Schools or his/her designee has the right to reject any and all bids in whole or in part. Any or all bids may be rejected if there is any reason to believe that collusion exists among the bidders. Individual bids may be rejected for irregularities of any kind, including, without limitation, alteration of form, additions not called for, conditional bids, incomplete bids and unexplained erasures.

The Superintendent of Schools or his/her designee retains the right to waive any formality or procedural irregularities in the bids received. Nothing in this Section should be construed to limit in any way the right of the Superintendent of Schools or his/her designee to reject any and all bids.

H. Advisement Of Bid Award

Upon acceptance of the Lowest Responsible Qualified Bidder, a letter will be sent to the successful bidder(s) announcing the award of the bid. All unsuccessful bidders will be sent a letter notifying them that they were not selected.

III. COMPETITIVE QUOTATION PROCESS

A. Purchases Requiring Competitive Quotation Process

Price quotations should be requested for all purchases of goods or general services, including high technology equipment, expected to involve an expenditure of at least \$5,001 but less than \$25,000. Purchases of goods or services which involve an expenditure of less than \$5,001 may be made directly, without regard to any competitive bid or quotation process. Waivers from the quotation process are available for the same reasons that Waivers are available from the bidding process. (See Section V.)

B. Process For Obtaining Quotations

Generally quotations, either oral or written, should be solicited by the Superintendent of Schools or his/her designee(s) from at least three (3) vendors or obtained from current catalogs or price sheets. The refusal of an otherwise valid supplier to quote shall qualify as a quotation. The quotation process does not require a public opening, and the Superintendent of Schools or his/her designee may send requests to a limited number of selected vendors. However, vendors must furnish all of the necessary information to the Superintendent of Schools or his/her designee by the specified date.

The purchase shall be awarded to the provider whose proposal is deemed to best provide the good and/or services desired, taking into account cost and the project requirements, and after consideration of a cooperative agreement with the municipality as described in Section I.B, above.

IV. COMPETITIVE PROPOSAL PROCESS FOR SPECIAL OR PROFESSIONAL SERVICES

A. Purchases Requiring Competitive Proposal Process

Purchases of Special or Professional Services may be made by competitive proposal should the situation warrant if the purchase exceeds the monetary thresholds set forth below. Special or Professional Services involve the furnishing of judgment, expertise, advice or effort by persons other than Board employees, and not involving the delivery of a specific end product that is defined by bid specifications. Examples of Professional Services include, but are not limited to, in-service instructional leaders, pupil services, special education evaluations, interpreters, tutors, computer programmers, architects, auditors, attorneys, instructional consultants, and temporary agencies. Examples of Special Services include, but are not limited to, repair services for Board property, equipment and vehicles where the nature of the repair cannot be defined in advance by bid specifications and the professional expertise of the service provider is critical. Waivers from the proposal process are available for the same reasons that Waivers are available from the bidding process. (See Section V.)

Funds must be available in the proper account in order to begin development of a Request for Proposals ("RFP").

Purchases of Special or Professional Services that are expected to be less than \$5,001 shall be made directly by the Superintendent of Schools or his/her designee, without regard to a competitive proposal process.

B. Informal Competitive Proposal Process (\$5,001 to \$25,000)

Purchases of Special or Professional Services for at least \$5,001 but less than \$25,000 shall be based upon a reasonable and documented attempt to solicit proposals. Where possible, proposals should be solicited from at least three (3) potential service providers. The refusal to submit a proposal from an otherwise valid provider shall qualify as a proposal. The process shall be documented in writing by the Superintendent of Schools or his/her designee. If a single reasonable source exists for the service, this fact shall be documented in writing.

An evaluation of the proposals received will be made by the Superintendent of Schools or his/her designee. The Superintendent or his/her designee shall award the contract to the service provider whose proposal is deemed to best provide the services desired, taking into account cost and the project requirements.

A record of all proposals submitted, giving the names of the service providers, the amount of the proposal and indicating the successful provider, shall be preserved by the Superintendent of Schools or his/her designee in accordance with State law.

C. Formal Competitive Proposal Process (\$25,000 or More)

Request for Proposals for Purchases of Special or Professional Services for \$25,000 or more shall be prepared by the Superintendent or his/her designee. All requirements, terms and conditions, including provider qualifications, should be included in the RFP, as well as a draft contract whenever practical. The award of any such contracts for \$25,000 or more shall be approved by the Superintendent.

The Superintendent of Schools or his/her designee will arrange to have a legal notice requesting proposals published in a local newspaper and on the Board's website at least five (5) business days prior to the deadline for submitting proposals. Whenever the Superintendent or his/her designee determines that the service requested is so specialized that few appropriate providers can reasonably be expected to respond to the notice, the Superintendent may substitute another means of notifying potential providers of the RFP in lieu of such newspaper and website notice. Any advertisement or other notice of the RFP shall include the general description of the services sought and the location where RFPs may be obtained.

Where possible, proposals should be solicited from at least three (3) potential service providers. The refusal to submit a proposal from an otherwise valid provider shall qualify as a proposal. The process shall be documented in writing by the Superintendent of Schools or his/her designee. If a single reasonable source exists for the service, this fact shall be documented in writing.

An evaluation of the proposals will be made by the Superintendent of Schools or his/her designee. The contract shall be awarded to the service provider whose proposal is deemed to best provide the services desired, taking into account cost and the requirements, terms and conditions contained in the RFP.

A record of all proposals submitted, giving the names of the service providers, the amount of the proposal and indicating the successful provider, shall be preserved by the Superintendent of Schools or his/her designee in accordance with State law.

V. WAIVERS

In certain situations the bidding, quotation and proposal processes described above may be waived even though the estimated cost exceeds the dollar threshold established by the Board. The formal processes may be waived for any of the following reasons:

(1) Only one (1) reasonable or qualified source can be identified. This will be determined in accordance with the City of Middletown's Purchasing Manual's definitions of Sole Source and Proprietary Purchases. This shall include situations such as the purchase of copyrighted materials and textbooks.

(2) Time is a critical factor, and taking the time necessary to comply with the formal process would not be in the best interests of the

school district.

(3) In the opinion of the Superintendent or his/her designee, an emergency requires the purchase of goods or services to avoid injury or damage to human life or property.

(4) A special source, including but not limited to a sale, purchasing plan, government discount or trade-in allowance, will supply a lower cost than that which would result from a bid process.

(5) A formal process would result in substantially higher costs to the school district, or inefficient use of personnel, or cause substantial disruption of school district operations.

(6) Prices of goods or services are subject to specific federal or state competitive bidding requirements, including, but not limited to, "school building projects" as defined in the Connecticut General Statutes.

(7) Regional or cooperative purchases.

(8) Cooperative agreement with the local municipality.

(9) Cooperative purchasing outside of the local municipality

A. Employees will be allowed to utilize State, Federal, and/or other governmental cooperative purchasing agreements, if to do so is in the Board's best interest.

B. The Board shall have the authority to join with other units of government in cooperative purchasing plans and participation with other utilities on an equitable basis in large bulk purchasing, when the best interests of the Board would be served thereby.

C. The Board, as a matter of policy, makes purchases cooperatively with other governmental agencies whenever it is to the mutual benefit of both cooperating agencies.

D. Local vendors who meet state, or city bid pricing may be awarded a contract with approval of the Chief of Administration and Finance.

For a requesting administrator to obtain a Waiver, the requesting administrator must make a written request to the Superintendent of Schools or his/her designee. The Waiver must bear the signature of the requesting administrator and state the reason(s) for requesting the Waiver. Upon receipt of such request, the Superintendent of Schools or his/her designee will promptly notify the requesting administrator if such Waiver has been granted.

In addition, the Superintendent of Schools or his/her designee, in his/her sole determination, may grant a Waiver for any of the above-listed reasons. Upon granting such a Waiver, the Superintendent of Schools or his/her designee must, in writing, state the reason(s) for granting such Waiver.

In permitting waivers, the Board of Education is required to comply with the purchasing requirements identified by local, state and federal funding sources.

VI. PROCUREMENT OF PROPERTY AND SERVICES UNDER A FEDERAL AWARD

Compliance Requirements - Suspension and Debarment

Non-federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred. "Covered transactions" include contracts for goods and services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed \$25,000 or meet certain other criteria as specified in 2 CFR section 180.220. All non-procurement transactions entered into by a passthrough entity (i.e., subawards to subrecipients), irrespective of award amount, are considered covered transactions, unless they are exempt as provided in 2 CFR section 180.215.

When a non-federal entity enters into a covered transaction with an entity at a lower tier, the non-federal entity must verify that the entity, as defined in 2 CFR section 180.995 and agency adopting regulations, is not suspended or debarred or otherwise excluded from participating in the transaction. This verification may be accomplished by (1) checking the System for Award Management (SAM). Exclusions maintained by the General Services Administration (GSA) and available at SAM.gov (click on Search Record, then click on Advance Search-Exclusions) (Note: The OMB guidance at 2 CFR Part 180 and agency implementing regulations still refer to the SAM Exclusions as the Excluded Parties List System (EPLS)), (2) collecting a certification from the entity, or (3) adding a clause or condition to the covered transaction with that entity (2 CFR section 180.300).

Non-Federal entities receiving contracts from the federal government are required to comply with the contract clause at FAR 52.209-6 before entering into a subcontract that will exceed \$30,000, other than a subcontract for a commercially available off-the-shelf item.

When procuring property and/or services under a Federal award, the Board will comply with relevant regulations in the Code of Federal Regulations, as described in 2 C.F.R. § 200.318 through 2 C.F.R. § [200.327](#), as amended from time to time, to the extent it is required to do so. [See Appendix A.](#)

VII. AUDITS

The Board may periodically engage an independent audit firm to review the purchasing procedures outlined in this policy.

Legal References:

State Law:

Conn. Gen. Stat. §10-241c Local board of education to consult with municipality re joint purchasing of property insurance, casualty insurance and workers' compensation insurance.

Conn. Gen. Stat. §10-241d Local board of education consultation with municipality re goods

and services. Cooperative
arrangements.

Conn. Gen. Stat. §10-241e Local board of education consultation with municipality prior to
purchase of payroll
processing or accounts payable software program.

Federal Law:

2 C.F.R. § 200.317 through 2 § C.F.R. [200.327](#).

2 C.F.R. § 200.81 (definition of property).

Policy adopted: May 16, 1995

Policy readopted June 8, 2004

Policy revised: April 12, 2016

Policy revised: February 8, 2022

Policy revised:

APPENDIX A

Procurement Standards for the Acquisition of Property or Services Under a Federal Award 2 C.F.R. §§ 200.317-300.327

This Appendix addresses procurements of property and services under a Federal award. Whenever these Federal Uniform Guidance Procurement Standards, as may be amended from time to time, are applicable to procurements made by the Board of Education (the “Board”), the Board shall apply the more restrictive procurement rules, to the extent it is required to do so.

<u>2 C.F.R. §</u>	<u>FULL TEXT OF C.F.R. SECTION</u>	<u>BRIEF SUMMARY</u>
<u>200.317</u>	<u>Procurements by States</u>	
<u>200.318</u> <u>200.318(a)</u>	<p><u>When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.</u></p> <p><u>General Procurement Standards</u></p> <p><u>The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations</u></p>	<p><u>A State must follow the same policies and procedures when making procurements under a Federal award and when making procurements using non-Federal funds. The Board must follow 2 C.F.R. §§ 200.318 through 200.327 when making procurements under a Federal award.</u></p> <p><u>The Board must have and use documented procurement</u></p>

	<u>and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.</u>	<u>procedures consistent with State, local, and Federal requirements for procurements made under a Federal award.</u>
<u>200.318(b)</u>	<u>Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.</u>	<u>The Board must maintain oversight of its contractors.</u>
<u>200.318(c)</u> <u>(1)</u>	<u>The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.</u>	<u>The Board must have written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. Board officers and employees (and their immediate family members, partners, and organizations which employ or are about to employ them) must not have a financial or other interest in a contract and must not solicit or accept gifts from contractors or subcontractors. The standards of conduct must provide for disciplinary actions for violations. See Code of Conduct Governing Procurements Under a Federal Award.</u>
<u>200.318(c)</u> <u>(2)</u>	<u>If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct</u>	<u>The Board's conflict of interest policy must cover relationships with certain parent, affiliate, or</u>

	<u>covering organizational</u> conflicts of interest. Organizational conflicts of interest means that because	subsidiary organizations, if any.
	<u>of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.</u>	
<u>200.318(d)</u>	<u>The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.</u>	<u>The Board must avoid acquisition of unnecessary or duplicative items.</u>
<u>200.318(e)</u>	<u>To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.</u>	<u>The Board is encouraged to use intergovernmental agreements or inter-entity agreements.</u>
<u>200.318(f)</u>	<u>The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.</u>	<u>The Board is encouraged to use Federal excess and surplus in lieu of purchasing new, when feasible.</u>
<u>200.318(g)</u>	<u>The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.</u>	<u>The Board is encouraged to use value engineering clauses in construction contracts of sufficient size.</u>

<u>200.318(h)</u>	<u>The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to</u>	<u>The Board must award contracts to responsible contractors, after considering contractor integrity, compliance with public policy, past</u>
	<u>such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.</u>	<u>performance, and financial and technical resources.</u>
<u>200.318(i)</u>	<u>The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.</u>	<u>The Board must maintain procurement records.</u>
<u>200.318(j)(1)</u>	<u>The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.</u>	<u>The Board may only use time-and-materials type contracts in limited circumstances.</u>
<u>200.318(j)(2)</u>	<u>Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.</u>	<u>The Board must set a ceiling price and assert a high degree of oversight on time-and-materials type contracts.</u>

<u>200.318(k)</u>	<u>The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern.</u>	<u>The Board must be responsible for settling contract disputes and administrative issues arising out of procurements.</u>
-----------------------------------	--	--

	<u>Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.</u>	
<u>200.319</u>	<u>Competition</u>	
<u>200.319(a)</u>	<u>All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.</u>	<u>The Board must conduct procurement transactions in a manner providing full and open competition.</u>
<u>200.319(b)</u>	<u>In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on retainer contracts; (5) Organizational conflicts of interest; (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and (7) Any arbitrary action in the procurement process.</u>	<u>Contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. The Board must avoid practices that are restrictive of competition.</u>

<u>200.319(c)</u>	<u>The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its</u>	<u>The Board is generally prohibited from using geographical preference in the evaluation of bids or proposals.</u>
-------------------	---	---

	<u>application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.</u>	
<u>200.319(d)</u>	<u>The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations: (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.</u>	<u>The Board must have written procedures for procurement transactions that ensure that solicitations (1) incorporate a clear and accurate description of technical requirements and (2) identify all requirements the offeror must fulfill and all other factors to be used in evaluating bids or proposals.</u>
<u>200.319(e)</u>	<u>The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.</u>	<u>The Board must ensure all prequalified lists are current and include enough qualified sources to ensure open and free competition.</u>

<u>200.319(f)</u>	<u>Noncompetitive procurements can only be awarded in accordance with § 200.320(c).</u>	<u>Noncompetitive procurements must be awarded in accordance with § 200.320(c).</u>
<u>200.320</u>	<u>Methods of Procurement to be Followed</u>	

<u>200.320</u>	<u>The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.</u>	<u>The Board must have and use documented procurement procedures for procurements made under a Federal award or sub-award.</u>
<u>200.320(a)</u>	<u>Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:</u>	<u>For purchases under the simplified acquisition threshold, or a lower threshold established by the Board, the Board may use informal procurement methods (micro-purchases and small purchases).</u>

<p><u>200.320(a)</u> <u>(1)</u></p>	<p><u>(1) Micro-purchases—</u> <u>(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.</u> <u>(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it[s] files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.</u> <u>(iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local,</u></p>	<p><u>Micro-purchases should be distributed equitably among qualified suppliers and may be awarded without soliciting competitive price or rate quotations if the Board considers the price to be reasonable based on research, experience, purchase history, or other information and documents its files accordingly.</u></p>
--	---	---

	<p><u>or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.</u></p> <p><u>(iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:</u></p> <p><u>(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;</u></p> <p><u>(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,</u></p> <p><u>(C) For public institutions, a higher threshold consistent with State law.</u></p> <p><u>(v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.</u></p>	
<p><u>200.320(a)</u></p> <p><u>(2)</u></p>	<p><u>(2) Small purchases—</u></p> <p><u>(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.</u></p>	<p><u>For small purchases, the aggregate dollar amount of which is higher than the micro-purchase threshold but lower than the simplified acquisition threshold, price or rate quotations must be obtained from</u></p>

	<u>(ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.</u>	<u>an adequate number of qualified sources.</u>
<u>200.320(b)</u>	<u>Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:</u>	<u>For purchases that exceed the simplified acquisition threshold, or a lower threshold established by the Board, formal procurement methods must be used and public advertising may be required.</u>
<u>200.320(b)</u> <u>(1)</u>	<u>(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions [stet]. (i) In order for sealed bidding to be feasible, the following conditions should be present: (A) A complete, adequate, and realistic specification or purchase description is available; (B) Two or more responsible bidders are willing and able to compete effectively for the business; and (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. (ii) If sealed bids are used, the following</u>	<u>In sealed bid procurements, bids are publicly solicited and the Board awards the contract to the lowest responsible bidder. The Board should use sealed bidding for procuring construction whenever complete, adequate, and realistic specifications are available, two or more responsible bidders are able to compete, and selection of a successful bidder can be made principally on the basis of price. If</u>

	<p><u>requirements apply: (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised; (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond; (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly; (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and (E) Any or all bids may be rejected if there is a sound documented reason.</u></p>	<p><u>sealed bids are used, they must meet certain requirements. Any or all bids may be rejected if there is a sound documented reason.</u></p>
<p><u>200.320(b)</u> <u>(2)</u></p>	<p><u>(2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements: (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical; (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections; (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the</u></p>	<p><u>Proposals for fixed price or cost-reimbursement type contracts are generally used when conditions are not appropriate for the use of sealed bids. Proposals are awarded after requests for proposals are publicized with evaluation factors identified; an adequate number of offerors are solicited, considered and evaluated; and contracts are awarded to the responsible offeror with the most advantageous proposal.</u></p>

	<u>most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.</u>	
<u>200.320(c)</u>	<u>Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply: (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section); (2) The item is available only from a single source; (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation; (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or (5) After solicitation of a number of sources, competition is determined inadequate.</u>	<u>The Board may procure goods via noncompetitive procurement only when the aggregate dollar amount does not exceed the micro-purchase threshold; the item is available only from a single source; in times of public emergency; when the Federal awarding agency expressly authorizes noncompetitive procurement; or competition is determined inadequate after solicitation of a number of sources.</u>
<u>200.321</u>	<u>Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms</u>	
<u>200.321(a)</u>	<u>The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.</u>	<u>The Board must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.</u>
<u>200.321(b)</u>	<u>Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation</u>	<u>Affirmative steps include, among other things, placing qualified</u>

	lists; (2)	small
	<p><u>Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.</u></p>	<p><u>and minority businesses and women's business enterprises on solicitation lists; assuring such businesses are solicited whenever they are potential sources; dividing total requirements, when economically feasible, into smaller tasks or quantities; and establishing delivery schedules, where the requirement permits, which encourage participation by such businesses.</u></p>
<u>200.322</u>	<u>Domestic Preferences for Procurements</u>	
<u>200.322(a)</u>	<p><u>As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.</u></p>	<p><u>The Board will, to the greatest extent practicable, provide a preference for goods, products or materials produced in the United States.</u></p>

<u>200.322(b)</u>	<p><u>For purposes of this section:</u></p> <p><u>(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.</u></p> <p><u>(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.</u></p>	
-----------------------------------	--	--

<u>200.323</u>	<u>Procurement of Recovered Materials</u>	
<u>200.323</u>	<p><u>A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.</u></p>	<p><u>The Board must follow standards in procuring certain items over \$10,000 to ensure, among other things, the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.</u></p>
<u>200.324</u>	<u>Contract Cost and Price</u>	
<u>200.324(a)</u>	<p><u>The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity</u></p>	<p><u>The Board must perform a cost or price analysis for every procurement in excess of the simplified acquisition threshold.</u></p>

	<u>must make</u> independent estimates before receiving bids or proposals.	
<u>200.324(b)</u>	<u>The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past</u>	<u>The Board must negotiate profit for sole-source procurements and for procurements where cost analysis is performed.</u>
	<u>performance, and industry profit rates in the surrounding geographical area for similar work.</u>	
<u>200.324(c)</u>	<u>Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E [Cost Principles] of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.</u>	<u>Costs incurred or estimated costs are allowable only to the extent they comply with Federal Cost Principles.</u>
<u>200.324(d)</u>	<u>The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.</u>	<u>The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.</u>
<u>200.325</u>	<u>Federal Awarding Agency or Pass-Through Entity Review</u>	

<u>200.325(a)</u>	<u>The non-Federal entity must make available, upon request of the Federal awarding agency or passthrough entity, technical specifications on proposed procurements when the Federal awarding agency or passthrough entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or passthrough entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.</u>	<u>The Board must make technical specs for procurements available upon request by the Federal awarding agency or passthrough entity.</u>
<u>200.325(b)</u>	<u>The non-Federal entity must make available upon request, for the Federal awarding agency or passthrough entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when: (1) The non-Federal entity's</u>	<u>Upon request, the Board must make procurement documents available for pre-procurement review by the Federal awarding agency or</u>
	<u>procurement procedures or operation fails to comply with the procurement standards in this part; (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product; (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.</u>	<u>passthrough entity in a number of circumstances.</u>

<u>200.325(c)</u>	<u>The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part. (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis; (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.</u>	<u>The Board is exempt from pre-procurement review if the Federal awarding agency or passthrough entity determines that its procurement systems comply with the standards of this part.</u>
<u>200.326</u>	<u>Bonding Requirements</u>	
<u>200.326</u>	<u>For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or passthrough entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:</u>	<u>For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the Federal awarding agency or passthrough entity may accept the Board's bonding requirements if it determines that its interest is adequately protected.</u>

<u>200.326(a)</u>	<u>A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptable of the bid, execute such contractual documents as may be required within the time specified.</u>	<u>The Board must require a bid guarantee of 5% of the bid price if the awarding agency or passthrough entity does not accept the Board’s bonding requirements.</u>
<u>200.326(b)</u>	<u>A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.</u>	<u>The Board must require a performance bond for 100% of the contract price if the awarding agency or passthrough entity does not accept the Board’s bonding requirements.</u>
<u>200.326(c)</u>	<u>A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided in the contract.</u>	<u>The Board must require a payment bond for 100% of the contract price if the awarding agency or passthrough entity does not accept the Board’s bonding requirements.</u>
<u>200.327</u>	<u>Contract Provisions</u>	
<u>200.327</u>	<u>The non-Federal entity’s contracts must contain the applicable provisions described in Appendix II to Part 200- Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.</u>	<u>The Board must include the Federal contract provisions in its contracts.</u>