

# Town of Colchester, Connecticut

127 Norwich Avenue, Colchester, Connecticut 06415

Mary Bylone, First Selectman

Board of Selectman Minutes

Meeting via Zoom

Thursday, August 5, 2021 @ 7 PM

**(ALL ITEMS ON THIS AGENDA ARE SUBJECT TO POSSIBLE ACTION)**

Members Present: First Selectman Mary Bylone, Selectmen Rosemary Coyle, Denise Turner and Taras Rudko

Members Absent: Selectman Denise Mizla

Others Present: Anton Smith, Alex Levere, Kevin Byrne, Cragin Memorial Library Director Kate Byroade, CFO Maggie Cosgrove, Town Planner Matt Bordeaux, Director of Public Works Jim Paggioli

1. CALL TO ORDER: First Selectman Mary Bylone called the meeting to order at 7:02 p.m.
2. PLEDGE OF ALLEGIANCE
3. ADDITIONS OR DELETIONS TO THE AGENDA: D. Turner motioned to remove the words Consent Agenda and approve 6A and 6B separately, seconded by R. Coyle. MOTION CARRIED UNANIMOUSLY  
R. Coyle motioned to reverse 13 and 14 on the agenda, seconded by T. Rudko. MOTION CARRIED UNANIMOUSLY
4. CITIZEN'S COMMENTS: K. Byrne spoke in favor of the Norton Park project.
5. CORRESPONDENCE: NONE
6.
  - A. Approve Minutes of the July 15 Board of Selectmen Meeting: D. Turner motioned to change the wording on #7 of the minutes to read as follows: "Members of the Ad Hoc Committee on Diversity and Inclusion presented their recommendation to establish a permanent Diversity Equity and Inclusion Commission," seconded by R. Coyle. MOTION CARRIED UNANIMOUSLY
  - B. Approve 2022 contract for funding awarded for Making Memories Program and authorize the First Selectman to sign all necessary documents: R. Coyle motioned to approve the FY 2022 contract for funding awarded for the Making Memories Program and authorize the First Selectman to sign all necessary documents, seconded by D. Turner. MOTION CARRIED UNANIMOUSLY
7. Colchester Concession Stand: Anton Smith and Alex Levere presented the name of the company they will be operating the Concession Stand under, "The A-Team, LLC." They will bring the full contract to the next Board of Selectman meeting for final approval to operate the concession stand. No action taken.
8. Norton Park Eversource Grant: K. Byrne presented his Eversource Foundation Grant application. R. Coyle motioned to support the submission of the Eversource grant application by the Norton Park Committee and authorize the First Selectman to sign all necessary documents related to this grant, seconded by D. Turner. MOTION CARRIED UNANIMOUSLY

[Selectman@ColchesterCt.gov](mailto:Selectman@ColchesterCt.gov)

860-537-7220

[www.ColchesterCT.gov](http://www.ColchesterCT.gov)

RECEIVED  
COLCHESTER, CT  
2021 AUG -9 AM 11:31  
Rosemary Coyle  
First Selectman  
TOWN CLERK

9. CIPA Filter at Cragin Memorial Library: R. Coyle motioned for the Board of Selectmen to consider the appropriateness of implementing the CIPA-compliant internet filtering at the Cragin Memorial Library and make a recommendation on moving forward, seconded by D. Turner. MOTION CARRIED UNANIMOUSLY
10. Approval of Addendum to Purchasing Policy – Federal Uniform Guidance Requirements: R. Coyle motioned to approve the purchasing policy addendum and the procurement standards document as an appendix, seconded by T. Rudko. MOTION CARRIED UNANIMOUSLY
11. Request to Conduct Activity on Town-Owned Land: D. Turner motioned that the Board of Selectmen authorize Niantic Bay Group, LLC to conduct activity approved by the Planning and Zoning Commission on plans titled “Lot-5 Jordan Alley, 347 Cabin Road, Colchester, CT, prepared for John Doran, June 10, 2021, revised July 15, 2021,” with the conditions that any and all contractors be appropriately insured and include the Town of Colchester as additionally insured and that any and all bonding for the work be posted in accordance with standards outlined in the Colchester Subdivision Regulation and by the State Statute, seconded by R. Coyle. MOTION CARRIED UNANIMOUSLY.
12. RFP 2021- 03 Bid Award Rapallo Viaduct Sewer Repair: R. Coyle motioned that the Board of Selectmen, acting as the WPCA, that the award of RFP 2021-03 Rapallo Viaduct Force Main Repair be awarded to J. Fletcher Creamer & Sons of Hackensack, NJ, with Bid Alternate A included for a total of \$438,930.00 and allocate from the Sewer Capital fund the same amount for the construction thereof, and authorize the First Selectman to sign all necessary documents, seconded by D. Turner. MOTION CARRIED UNANIMOUSLY
13. Contract Amendment #1 Environmental Partners Group – Engineering Inspection to Support RFP 2021-03: D. Turner motioned that the Board of Selectmen, acting as the WPCA, approve the Contract Amendment No.1 Dated July 2021 for Engineering and Supplemental Services with Environmental Partners Group, LLC for the sum not to exceed \$37,600 and authorize the First Selectman to sign all necessary documents, seconded by T. Rudko. MOTION CARRIED UNANIMOUSLY
14. RFP 2021-02 Bid Award and Appropriation for Demolition Services: R. Coyle motioned that the Board of Selectmen hereby awards RFP 2021-02 Demotion Services -129 Westchester Road and 108 Mill Street to Wiese Construction, Inc. of Norwich, CT for a total bid amount of \$65,205.00 and authorize the First Selectman to sign all necessary documents. Additionally, that the Board of Selectmen, authorize the expense from the project to be funded from the existing Building and Grounds Reserve Fund (present unassigned balance of approximately \$146,000) with proper referral to the Board of Finance in accordance with the policy for use of this fund adopted by both the Board of Selectmen and Board of Finance, seconded by D. Tuner. MOTION CARRIED UNANIMOUSLY
15. Set Town Meeting Date for Town Budget – No action taken.
16. CITIZEN’S COMMENTS: None



17. FIRST SELECTMAN'S REPORT: A COVID Update – Colchester is doing well with COVID numbers, but New London County was one of the first hot spots as the numbers began to rise in the state. FS has mandated mask wearing in all Town Buildings. This decision is to protect the Town Employees by not putting them at risk of getting sick and having to shut down town services. All Boards and Commission meetings are going back to Zoom only format. Private meetings of community groups can still be held at Town Hall as long as they wear a mask and practice social distancing.
18. LIAISON REPORTS: NONE TO REPORT
19. ADJOURN: T. Rudko motioned to adjourn at 7:48 p.m., seconded by R. Coyle. MOTION CARRIED UNANIMOUSLY

**TOWN OF COLCHESTER  
PLANNING AND ZONING DEPARTMENT**

**TO:** Board of Selectmen

**FROM:** Matthew R. Bordeaux, Planning Director *MRB*

**DATE:** July 22, 2021

**RE:** Niantic Bay Group, LLC – 347 Cabin Road  
Request to Conduct Activity on Town-owned Land

Niantic Bay Group, LLC is proposing a residential subdivision of 347 Cabin Road (see plan attached). The proposed subdivision application, or resubdivision to be specific, is under review by Town staff and permit applications will be considered by the Colchester Conservation Commission and Planning and Zoning Commission at upcoming regular meetings. As a part of the proposed project, Mr. John Doran, Project Manager, is requesting permission from the Board of Selectmen to conduct activity on Town-owned land to construct a stormwater detention basin.

The proposed subdivision project is Phase II of a previously approved subdivision referred to as “Jordan Alley”. The original approval included the dedication of approximately 15 acres of open space to satisfy the requirements of the Subdivision Regulations for both Phase I and II of the project. The original approved included the construction of a stormwater detention basin to be located on the open space dedicated to the Town. The current resubdivision plan, which consists of six (6) lots on the existing Lot 5 of the Jordan Alley Subdivision, requires that the previously approved detention basin be constructed as part of the stormwater management system required to store stormwater collected from impervious and pervious surfaces introduced as part of the project.

Construction of the detention basin will require temporary and short-term disturbance of Town-owned land until the site is stabilized. While the proposed activity is located entirely within the regulated inland wetland upland review area, it is not anticipated to have a negative or detrimental impact on any regulated resources.

Draft Motion:

The Board of Selectman authorize Niantic Bay Group, LLC to conduct activity approved by the Planning and Zoning Commission on plans titled “Lot-5 Jordan Alley, 347 Cabin Road, Colchester, CT, prepared for John Doran, June 10, 2021, revised July 15, 2021”, with the conditions that any and all contractors be appropriately insured and include the Town of Colchester as additionally insured and that any and all bonding for the work be posted in accordance with standards outlined in the Colchester Subdivision Regulations and by State Statute.

MRB

R:\Boards and Commissions\PZC\Applications\Jordan Alley Re-Subdivision\Memo to BOS.docx

Attach

# Niantic Bay Group, LLC



ALL YOU NEED IN THE PLACE YOU CALL HOME

1967 N Rose Hue Path  
Hernando, Florida 34442  
www.nianticbaygroup.com

John Doran - Project Manager  
cell: 860-941-0588  
fax: 941-870-7861  
john@nianticbaygroup.com

July 13, 2021

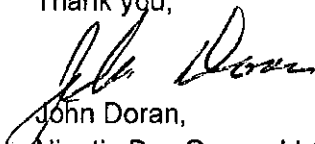
Selectwoman Mary Bylone  
Town of Colchester  
127 Norwich Ave  
Colchester, Connecticut 06415

Re: 347 Cabin Road

Dear Selectwoman Bylone:

We have an application before the Inland Wetland and Planning & Zoning boards for a re-subdivision approval of property we own at 347 Cabin Road. The original approval for the project was in two phases; phase one was completed by the previous owner and it included open space in both phases that was granted to the Town of Colchester as part of phase one. The open space dedicated for phase two includes a detention basin that was part of original and which we will build. Because the open space is now owned by the town, we need Board of Selectman approval for this work to be completed. Your earliest consideration for this request will be greatly appreciated.

Thank you,

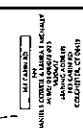
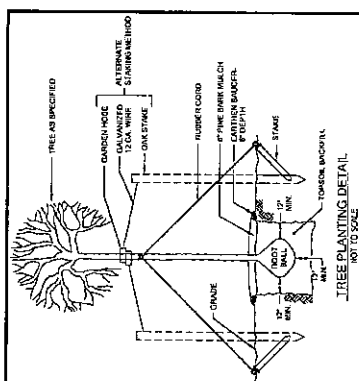
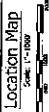
  
John Doran,  
Niantic Bay Group, LLC



[www.hfotusa.org](http://www.hfotusa.org)



BBB Rating: A+  
YEARS IN BUSINESS  
10/15/2016

[illegible]

1. "PROPOSED JORDAN ALLEY SUBDIVISION CANN ROAD, COLCHESTER, CT"  
DATE: FEBRUARY 6, 2007 APPROVED TO JANUARY 9, 2008; SCALE 1"=100';  
BY: STANTEC 180 MOUNTAIN ROAD, COLCHESTER, CT 06415 SHEET #2 OF 14.

NANTIC BAY GROUP, LLC  
 347 JOHN A. WOOD STREET, CT  
 NANTIC BAY GROUP, LLC, 1507 N ROSE HUE PATH  
 HEDENHED, CT 06442  
 01-907001-005  
 784,295 SF = 6.61 ACRES  
 ZONE 3 FOR 1001 MAP 9 0901 (03)05G  
 EFFECTIVE DATE: 7/1/2011  
 50

Prepared For:  
**JOHN DORAN**  
June 10, 2021



Gregg T. Fedus P.E.  
CT. License No. 21731

[illegible]

Town-Owned Open Space  
Inland Wetlands Area  
Proposed Detention Basin

# Town of Colchester/Colchester Board of Education

## Purchasing Policy Addendum

### Federal Uniform Guidance

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When procuring property and services under a Federal award (including federal funds that are passed through the State of Connecticut), the Town of Colchester/Colchester Board of Education will follow the federal procurement standards as set forth in the Code of Federal Regulations (CFR) Sections 200.318 to 200.327.

Objectives of the procurement standards are to ensure the following:

- Oversight must be maintained to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- Contracts are awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
- Records must be sufficiently maintained to detail the history of procurement.
- Transactions are conducted in a manner providing full and open competition.
- Potential bidders are not precluded from qualifying during the solicitation period.
- Avoid acquisition of unnecessary or duplicative items.

In addition, the Town of Colchester/Colchester Board of Education purchasing procedures will include the following requirements in accordance with the CFR.

CFR Section	Requirement	Procedures
200.321	<b>Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.</b>	<p>(a), (b) 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 including:</p> <p>(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;</p> <p>(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;</p> <p>(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;</p> <p>(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;</p> <p>(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</p> <p>(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.</p>

CFR Section	Requirement	Procedures
200.322	Domestic preferences for procurements	(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
200.323	Procurement of Recovered Materials	A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
200.324	Contract cost and price	<p>(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.</p> <p>(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.</p> <p>(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.</p> <p>(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.</p>



CFR Section	Requirement	Procedures
200.325	Federal awarding agency or pass-through entity review	<p>(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.</p> <p>(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates</p> <p>(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.</p>
200.326	Bonding requirements.	<p>For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:</p> <p>(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.</p> <p>(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.</p> <p>(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.</p>

CFR Section	Requirement	Procedures
200.327	Contract provisions	<p>The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.</p> <p>(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.</p> <p>(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.</p> <p>(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b)</p> <p>(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").</p> <p>(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).</p> <p>(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.</p>

CFR Section	Requirement	Procedures
200.327	Contract provisions	<p>(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).</p> <p>(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."</p> <p>(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.</p>

Uniform Guidance defines five (5) methods of procurement and the requirements for each type. The Town of Colchester/Colchester Board of Education purchasing policy is to follow the procedures as required and summarized in the following table:

Procurement Type	Dollar Threshold	Procedures
Micro-purchases	\$0 – \$10,000	<p>May be awarded without soliciting competitive price or rate quotes if price is considered to be reasonable.</p> <p>Reasonableness can be determined by comparing the price to past purchases or other published prices and/or requesting prices from more than one vendor</p> <p>When possible, purchases will be distributed equitably among a range of qualified vendors</p>
Small purchases	\$10,001 – 250,000	<p>Price or rate quotes must be obtained from at least two (2) sources</p> <p>Price quotes, including phone quotes must be formally documented and retained.</p> <p>Price does not need to be deciding factor</p>

<b>Procurement Type</b>	<b>Dollar Threshold</b>	<b>Procedures</b>
<b>Sealed bids</b>	<b>\$250,001 and greater</b>	<p>Bids must be formally solicited from an adequate number of vendors (2 or more)</p> <p>Bids must be publicly advertised</p> <p>Bids/RFP package will provide sufficient response time</p> <p>Request for bid or proposal will clearly define details and scope of the project, and the items or services requested from the bidder including the timeline</p> <p>Bids will be opened publicly</p> <p>Bids will be awarded based upon firm fixed price contract made in writing to the lowest responsive and responsible bidder</p> <p>Any or all bids may be rejected based upon cancellation of the project, change in needs or any other valid reason. The reason for rejecting all bid must be formally documented</p>
<b>Competitive proposals</b>	<b>\$250,001 and greater</b>	<p>Bids must be publicized and identify all evaluation factors and their relative importance</p> <p>Bids must be solicited from an adequate number of qualified sources</p> <p>Award will be based upon a written method for conducting technical evaluations of the proposals and selecting recipients</p> <p>Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered</p>
<b>Noncompetitive procurement</b>	<b>\$10,000 and greater</b>	<p>May be used only when the item is available only from a single source, the public exigency or emergency will not permit a delay resulting from competitive solicitation, federal awarding agency or pass-through entity expressly authorizes its use in response to a written request, or after solicitation of a number of sources competition is determined inadequate</p> <p>Justification of the use of noncompetitive procurement must be documented</p> <p>Research on availability from multiple sources must be documented</p> <p>Documentation of authorization must be retained</p> <p>Any initial solicitations from multiple sources which are concluded to be inadequate, and such reasoning, must be documented</p>

The full text of the procurement standards contained in the CFR have been included in this purchasing policy addendum as Appendix A. Any subsequent amendments to the federal procurement standards will be automatically incorporated into this purchasing policy addendum as of their effective date.

## UNIFORM GUIDANCE (2 CRF PART 200)

<https://www.ecfr.gov>

### PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

#### Subpart D: Post Federal Award Requirements

#### **Procurement Standards**

#### **§200.317 Procurements by states.**

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by §200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§200.318 through 200.327.

#### **§200.318 General procurement standards.**

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

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities



may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

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

## **§200.319 Competition.**

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and §200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with §200.320(c).

## **§200.320 Methods of procurement to be followed.**

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

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in

§200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) *Micro-purchases*—(i) *Distribution*. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in §200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards*. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) *Micro-purchase thresholds*. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) *Non-Federal entity increase to the micro-purchase threshold up to \$50,000*. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with §200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in §200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) *Non-Federal entity increase to the micro-purchase threshold over \$50,000*. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) *Small purchases*—(i) *Small purchase procedures*. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) *Simplified acquisition thresholds*. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) *Formal procurement methods*. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with §200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) *Sealed bids*. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;



(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals.* A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

### **§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

### **§200.322 Domestic preferences for procurements.**

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **§200.323 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **§200.324 Contract cost and price.**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

## **§200.325 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific

policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

## **§200.326 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## **§200.327 Contract provisions.**

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



## **Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#), and [3146-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the

compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of



Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See [§ 200.323](#).

(K) See [§ 200.216](#).

(L) See [§ 200.322](#).

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014; [85 FR 49577](#), Aug. 13, 2020]