

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) **Simplified acquisitions-(i) Simplified acquisition 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 simplified acquisition 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 though 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.

2 CFR 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.

2 CFR 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.

2 CFR 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.

2 CFR 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.

2 CFR 200.326 Bonding requirements

For construction or facility improvement contracts or sub contracts 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.

2 CFR 200.327 Contract provisions

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

P2. Does the recipient maintain written standards of conduct for its representatives engaged in the selection, award, and administration of FTA-funded contracts?

BASIC REQUIREMENT

The recipient must have and implement written standards of conduct for those involved in its procurement and contract administration actions.

APPLICABILITY

Non-state recipients

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by Federal funds. The standards must:

- Preclude any employee, officer, or agent from participating in the selection, award, or administration of a contract supported with FTA assistance if he or she has any real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing has a financial or other interest or a tangible personal benefit from a firm considered for a contract.
- Include a restriction that the recipient's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- Provide for disciplinary action for violation of such standards by the recipient's officers, employees, or agents.

If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the recipient 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.

INDICATORS OF COMPLIANCE

- a. *Does the recipient have written standards of conduct?*
- b. *Do the recipient's standards of conduct include all required elements?*

INSTRUCTIONS FOR REVIEWER

Request and review the recipient's standards of conduct for procurement-related actions. These may be contained in the recipient's policies and procedures, in a separate document(s), or different documents for employees and governing board members. If the recipient has state and/or local laws with requirements that are more restrictive than the Federal requirements below, then those procedures are to be followed.

Review standards of conduct to ensure that, at a minimum, they:

- Preclude any employee, officer, or agent from participating in the selection, award, or administration of a contract supported with FTA assistance if he or she has any real or apparent conflict of interest.

- Include a restriction that the recipient's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Provide for disciplinary action for conflict of interest violations by the recipient's officers, employees, or agents.
- If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, verify the written standards of conduct cover organizational conflicts of interest.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have written standards of conduct.

DEFICIENCY CODE P2-1: No written standards of conduct

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit written standards of conduct that include all required provisions.

The recipient is deficient if its written standards of conduct do not contain all required elements.

DEFICIENCY CODE P2-2: Incomplete standards of conduct

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit written standards of conduct that include all missing provisions.

GOVERNING DIRECTIVE

2 CFR 200.318 (c)(1) & (2)

(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.

FTA Master Agreement (30), Section 4

(a) Standards of Conduct. At a minimum, the Recipient agrees to, and assures that its Subrecipients will, establish and maintain written Standards of Conduct covering conflicts of interest that:

(1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third party contract or subcontract:

(i) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement;

(ii) The immediate family members or partners of those listed above in section 4(a)(1)(i) of this Master Agreement; and

(iii) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections 4(a)(1)(i) and (ii) of this Master Agreement;

(2) Prohibit those individuals listed above in section 4(a)(1) from:

(i) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest; and

(ii) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an

insubstantial financial or nominal intrinsic value; and

(3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section 4(a)(1) and the Recipient's or Subrecipient's Third Party Participants

P3. Question removed from the FY25 Contractor Manual.

P4. Does the recipient make awards only to responsible contractors as described in its policies and procedures and in compliance with the requirements of 49 U.S.C. 5325(j) and 2 CFR 200.318(k)?

BASIC REQUIREMENT

The recipient must only contract with responsible firms.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

49 U.S.C. Section 5325 (j) requires recipients to make FTA-assisted contract awards only to "responsible" contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement. Before making an award to a contractor, a recipient shall consider the integrity of the contractor; the contractor's compliance with public policy; the contractor's past performance; and the contractor's financial and technical resources. The form and formality of the recipient's responsibility

determination will be appropriate to the size, complexity, and risk of each particular procurement. It is a recommended practice to make a written responsibility determination for procurements above the simplified acquisition threshold. Responsibility is determined by the recipient after receiving bids or proposals and before making contract award.

Recipients also are required to ensure before entering into a covered contract that the potential contractor and its principals are not suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. This applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation. For each third party contract expected to equal or exceed \$25,000, recipients must verify that the bidder is not excluded or disqualified by:

- Checking System for Award Management (SAM) Exclusions (at SAM.gov); or
- Collecting a certification; or
- Adding a clause or condition to the covered transaction

FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed certification, are preferred. A best practice is for the recipient to print the screen with the results of the search to include in the award or procurement file, or to have a checklist noting when the SAM was reviewed.

2 CFR 180.995 defines a principal, in part, as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction; or a consultant or other person, whether or not employed by the contractor or paid with Federal funds, who is in a position to handle federal funds, influence or control the use of those funds, or who occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

In the event that a recipient becomes aware that an excluded party is participating in a covered transaction, it must promptly inform the FTA regional office in writing of this information. The recipient may continue any covered transaction in existence at the time a party becomes excluded. The recipient is not required to continue the transaction and may consider termination. However, the recipient may not renew or extend the covered transaction (other than through a fully documented no-cost time extension) with the excluded party without FTA's approval.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Eligible Operations or Maintenance Expenses

Under the authority of the Emergency Relief program to set the necessary terms and conditions of an award (49 USC 5324 (d)(1)), FTA permits funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. The procurement of any new contracts would need to follow all Federal requirements.

INDICATORS OF COMPLIANCE

- a. *Do procurement files reflect that the recipient made responsibility determinations prior to award, considering all required information?*

- b. *Prior to award, does the recipient have documentation that third party contractors are not suspended or debarred?*

- c. *How does the recipient ensure that prime contractors flow the suspension/debarment requirement down to their lower tier subcontractors?*

- d. *Did the recipient extend a contract with a contractor after it determined that the contractor had been suspended or debarred?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's policies and procedures for its process of conducting and documenting responsibility determinations and ensuring it does not award contracts to debarred or suspended contractors or individuals.

During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine if the recipient makes responsibility determinations prior to awarding contracts.

Examine responsibility determinations to verify that the recipient made responsibility determinations for each successful bidder prior to award and that consideration was given to matters such as:

- contractor integrity,
- compliance with public policy,
- record of past performance, and
- financial and technical resources

Review procurements of \$25,000 or more for the suspension and debarment requirements. Review contract and subrecipient files to verify if the recipient or subrecipient is determining that bidders were not excluded or disqualified before entering into any third party contracts. Document that the recipient makes this verification by:

- checking SAM Exclusions (at SAM.gov), or
- collecting a certification, or
- adding a clause or condition to the covered transaction

Discuss with the recipient if it has become aware of any situation in which an excluded party is participating in a covered transaction. For the procurements reviewed, check SAM.gov to determine if the contractors are suspended or debarred. Determine if the recipient received FTA approval to extend (other than a no-cost extension) or renew a contract with a suspended or debarred contractor prior to taking those actions.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not make responsibility determinations that include the required elements prior to award.

DEFICIENCY CODE P4-1: Responsibility determination deficiencies

SUGGESTED CORRECTIVE ACTION: For any contracts where the recipient was found to have failed to verify that the contractor was responsible, the recipient must verify the responsibility of contractors. The recipient must submit documentation of an implemented process to make

adequate responsibility determinations prior to award of a contract. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient if it has not verified that excluded parties are not participating prior to applicable awards or actions or does not require prime contractors to flow down exclusion requirements to lower tiers.

DEFICIENCY CODE P4-2: No verification that excluded parties are not participating/ no requirement for prime contractor to flow down exclusion requirements to lower tiers

SUGGESTED CORRECTIVE ACTION 1: For any contracts where the recipient was found to have failed to verify that the contractor was in compliance with suspension/debarment requirements, the recipient must either amend the contract with the appropriate clause, obtain the applicable certification from the third-party contractor(s), or verify that the contractor is not suspended or debarred based on a review of SAM.gov. The recipient must submit procedures for making excluded party determinations before entering into applicable transactions. For the next procurement, submit documentation that the required process was implemented.

SUGGESTED CORRECTIVE ACTION 2: In cases where the recipient has not required its prime contractor to flow down exclusion requirements, the recipient must submit procedures for so requiring. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient if it extended (other than a no-cost time extension) or renewed a contract with a contractor subsequent to it becoming suspended or debarred, unless approved by FTA.

DEFICIENCY CODE P4-3: Excluded parties participating in covered transactions

SUGGESTED CORRECTIVE ACTION: The recipient must confer with the FTA regional office for any contract that was extended or renewed with a suspended or debarred contractor. The recipient must submit procedures for making excluded party determinations before entering into applicable transactions.

GOVERNING DIRECTIVE

49 U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS

"(1) IN GENERAL. Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

(2) CRITERIA. Before making an award to a contractor under paragraph (1), a recipient shall consider:

- A. the integrity of the contractor;
- B. the contractor's compliance with public policy;
- C. the contractor's past performance, and
- D. the contractor's financial and technical resources."

2 CFR 180.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by: (a) Checking SAM Exclusions; or (b) Collecting a certification from that person; or (c) Adding a clause or condition to the covered transaction with that person.

2 CFR 180.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate. (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.

2 CFR 1200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

2 CFR 200.318 General procurement standards

(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.

2 CFR 200.214 Suspension and debarment

Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE2

Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324 (d)(1)), FTA will permit funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. Any new contracts would need to follow all federal requirements.

P5. Does the recipient maintain records sufficient to detail the history of each procurement as described in its policies and procedures and in compliance with 2 CFR Part 200?

BASIC REQUIREMENT

The recipient must maintain a written history of each procurement.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Recipients must maintain records sufficient to detail the significant history of a procurement. At a minimum, such records must include:

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)
- Selection of contract type (i.e., fixed price, cost reimbursement)
- Reason for contractor selection or rejection
- Basis for the contract price (i.e., cost/price analysis)

The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records may vary greatly for different procurements or procurement methods.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Eligible Operations or Maintenance Expenses

Under the authority of the Emergency Relief program to set the necessary terms and conditions of an award (49 USC 5324 (d)(1)), FTA permits funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. The procurement of any new contracts would need to follow all Federal requirements.

INDICATOR OF COMPLIANCE

- a. *Do procurement files reviewed include required historical information?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's policies and/or procedures for documenting procurement files. During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine if procurement records include the minimum information listed below:

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)
- Selection of contract type (i.e., fixed price, cost reimbursement)
- Reason for contractor selection or rejection
- Basis for the contract price (i.e., cost/price analysis)

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if, for any procurement examined, procurement records do not contain the minimum documentation required.

DEFICIENCY CODE P5-1: Incomplete written documentation of procurement history

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence that the deficiencies identified in its record-keeping process have been corrected and that procurement staff have been trained on documenting procurement history.

GOVERNING DIRECTIVE

2 CFR 200.318(i)

The non-Federal entity must maintain records sufficient to detail the history of the 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.

Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE2

Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324 (d)(1)), FTA will permit funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. Any new contracts would need to follow all federal requirements.

- P6. Does the recipient ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders in its policies and procedures and in compliance with 2 CFR Part 200?**

BASIC REQUIREMENT

Recipients must have oversight mechanisms to ensure that contractors perform in accordance with the terms of their contracts.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Recipients are required to have mechanisms in place to ensure that contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders. 2 CFR part 200 assigns responsibility to the recipient for resolving all contractual and administrative issues arising out of its third party procurements, including protests of awards, disputes, and claims using good administrative practices and sound business judgment. Neither FTA nor 2 CFR part 200 relieves the recipient of any contractual responsibility under its contracts.

Many FTA recipients assign contracting duties to technical, financial, or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Eligible Operations or Maintenance Expenses

Under the authority of the Emergency Relief program to set the necessary terms and conditions of an award (49 USC 5324 (d)(1)), FTA permits funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. The procurement of any new contracts would need to follow all Federal requirements.

INDICATOR OF COMPLIANCE

- a. *Does the recipient conduct oversight of third party contractors to ensure performance in accordance with contract terms?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review milestone progress reports in TrAMS and information provided by the recipient to determine if there were any contracts noted as having issues with the contractor not performing in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Review information in TrAMS and those received from the recipient on the resolution of disputes or claims. Ask the regional office if there are any procurements that should be reviewed for contractor performance issues. Prior to the site visit, request and review the recipient's policies and procedures, which should include procedures to ensure contract performance and to resolve third party contracting issues, for any described contract administration processes and responsibilities.

Onsite, during review of selected procurements, determine if contract administration and oversight procedures are being implemented as described in policies and procedures. Determine if the recipient is monitoring the contractor's on-time delivery of products or services as detailed in any contractual milestones. Determine if the recipient is analyzing the cause of cost overruns, scope changes, or slippages in delivery schedules or milestone dates.

For any procurements examined for which enforcement of contract administration remedies appeared to be warranted (i.e. liquidated damages, remedies related to milestone or delivery dates or performance standards), determine if appropriate actions were taken. In accordance with 2 CFR §200.318(j)(2), recipients must assert a high degree of oversight for time and materials type contracts in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if the recipient does not have documentation evidencing contract oversight pursuant to its internal policies and/or procedures. For example, the recipient is deficient if non-performance of contractors is a persistent problem, with contractors either not performing in accordance with the terms and conditions of their contracts, or issues remain unresolved for a substantial length of time, or the recipient cannot demonstrate that it has taken remedial action in accordance with its policies and procedures.

DEFICIENCY CODE P6-1: Contract administration system lacking

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit revised procurement procedures that include oversight procedures and remedies for non-performance, along with evidence of implementation.

GOVERNING DIRECTIVE

2 CFR 200.318(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.

Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE2

Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324(d)(1)), FTA will permit funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. Any new contracts would need to follow all federal requirements.

P7. Does the recipient ensure that it conducts all procurement transactions in a manner that provides full and open competition and does not unduly restrict competition in its procurement process and as described in its policies and procedures and in compliance with 49 USC 5325(a) and 2 CFR Part 200?

BASIC REQUIREMENT

Procurement transactions must be non-restrictive.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Restricting Competition:

Recipients must conduct procurement transactions in a manner providing full and open competition. Recipients are prohibited from restricting competition in federally supported procurement transactions. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and/or excessive bonding;
- 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;
- Having overly burdensome requirements for approval of an equal product;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest; and
- Any arbitrary action in the procurement process.

Geographic Preference:

Recipients are prohibited from specifying in-state or local geographic preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-state dealers.

Exceptions expressly authorized by law include the following:

- A&E Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. Although geographic preferences are permissible in procurements for A&E services, the reviewer