

Community Mental Health Partnership of Southeast Michigan		<i>Policy: Procurement of Goods and Services</i>	
CMHPSM Board Governance			
Original Board Approval 5/14/2014	Date of Approval 4/14/2021	Date of Implementation 4/14/2021	

I. PURPOSE

To establish a policy and standards that the CMHPSM will abide by based upon current federal, state, and all other applicable regulations when purchasing goods and/or services.

II. REVISION HISTORY

Revision Date	Modification	Implementation Date
9/13/2017	Updated to reflect 42 CFR.	9/13/2017
5/13/2020	Updated to reflect CEO title change, and Board review	5/13/2020
8/12/2020	Updated to reflect current 2 CFR 200.318-326	8/12/2020
4/14/2021	Annual Board review	4/14/2021

III. POLICY

It is the policy of the CMHPSM that all procurement of goods and services will follow all federal and state regulations, the standards outlined in this policy and/or any other related CMHPSM operational policies. The CMHPSM will utilize procurement processes that are fair and competitive, allowing the organization to conduct business in the most efficient, cost-effective manner as good stewards of public funding.

IV. DEFINITIONS

Community Mental Health Services Program (CMHSP) – An agency formed under Act 258 of the Public Acts of 1974 as amended (the Mental Health Code) responsible for the delivery of mental health services.

FAR – Federal Acquisition Regulations Volume I & II

Micro-Purchase Threshold – procurement of goods or services in which the aggregate amount does not exceed the micro-purchase threshold of \$3,000.00. FAR Subpart 2.1

P.O. – Purchase Order, purchase orders are used for purchases and contracts over \$3,000.00.

RFP – Request for Proposals

RFI – Request for Information

RFQ – Request for Quotes

Specialty Service Contract – CMHPSM contract with direct service providers of mental health or substance use disorder services, other than CMHPSM-CMHSP agreements.

V. STANDARDS

A. CMHPSM Procurement Thresholds

1. All CMHPSM staff will follow the appropriate approval process and meet all requirements identified for each amount and type of purchase or contract. CMHPSM procurement thresholds are found in Exhibit A.
 - a. No procurement thresholds will be manipulated through multiple purchase orders, separate contracts or any other method to artificially stay beneath the cost limit of the threshold.
 - b. Procurement thresholds for purchases of goods, supplies or materials relates to single purchases from a single vendor at one point in time.
 - c. Procurement thresholds for purchases of services with a contract relate to the term of the contract (if the term is less than one year), or relate to the current fiscal year.
 - d. All purchases of goods and services over \$3,000.00 require a purchase order.
 - e. Equipment or asset purchases over \$5,000.00 per unit or item will be depreciated according to GAAP.

B. Credit Card Utilization

1. Credit card purchases can be used only within the micro purchase threshold and must follow the CMHPSM Issuance and Use of Credit Cards Policy. The use of credit cards for low-cost or quantity purchases, especially in the case of infrequently used vendors, is the preferred purchase method to reduce administrative costs in the Finance Department.

C. Code of Ethics

1. All CMHPSM employees will conduct CMHPSM business operations in an ethical manner which meets the standards of all applicable laws, regulations and CMHPSM policies and procedures.
2. Gifts from vendors and contractors- The CMHPSM Board members, CMHPSM Chief Executive Officer and any CMHPSM employees involved in the procurement or contract development processes are not able to accept gifts of any value from potential or current contractors or vendors.

D. Procedures and Forms

1. CMHPSM Staff will utilize the most recent versions of any procurement, contract request, credit card pre-approval or any other relevant forms. All forms developed for procurement within the CMHPSM shall meet the standards and regulations referenced in this policy.

E. Informal Procurement

1. CMHPSM staff procuring goods or services within the Micro-Purchase Threshold are not required to utilize, but can use an informal procurement process such as: obtaining multiple verbal bids, utilizing a preferred vendor with reduced government pricing, etc. CMHPSM staff are to be good stewards of public funds, and to provide the best value to the CMHPSM organization as a whole.

F. Formal Competitive Procurement

1. Procurement of goods and services that exceed the Micro-Purchase Threshold must utilize formal procurement procedures, unless a bid waiver is approved by the Chief Executive Officer. Formal procurement procedures include the following:
 - a. *Procurement of Goods, Administrative & Professional Services, Leases or Other Non-Specialty Service Contracts* – CMHPSM will utilize appropriate approvals, procurement processes and regulations related to non-specialty services. RFPs, RFQs and RFIs may be used as outlined in the standards of this policy.
 - b. *Procurement of Specialty Service Contracts* – All MDHHS rules and regulations outlined in the MDHHS-CMHPSM agreements will be followed by the CMHPSM when contracting for any specialty service contracts. Specialty service contracts are used for all clinical service provision agreements, including Mental Health and Substance Use Disorder services, excluding CMHPSM to CMHSP agreements. Procurement of specialty service contracts must utilize one of the following procurement methods in conjunction with an RFP, RFQ or RFI, unless a bid waiver is approved by the Chief Executive Officer.
 - i. Selective Contracting – CMHPSM may purchase services from a limited number of providers who agree to fulfill contractual obligations for an agreed upon price. The managing entity identifies the specific services to be provided, seeks proposals price bids, and awards contracts to the best bidders. Contracts are let only with a sufficient number of providers to assure adequate access to services. The prospect of increased volume induces providers to bid lower prices.
 - ii. Procurement to Obtain Best Prices Without Selective Contracting – Under an "any willing and qualified provider" process, bids can be solicited and used to set prices for a service, and then contracts or provider agreements can be offered to any qualified provider that is willing to fulfill the contract and meet the bid price.
 - c. *RFP/RFQ/RFI* – Requests for Proposals, Quotes or Information are used to fairly procure goods and services in certain situations
 - i. Requests for Information – RFIs are used primarily for pilot programs, system development or a service that is unfamiliar to the CMHPSM. Respondents are asked to propose information, asked to identify a problem and provide a solution or propose a unique solution to an issue. A RFI is often used in conjunction with a RFQ.
 - ii. Requests for Quotes – RFQs are usually used when the CMHPSM has identified a specific need for a good or service and is requesting a total

project cost, service rate or cost structure. RFQs can be used or are often used after an RFI is issued to complete the procurement process.

- iii. Requests for Proposals – RFPs are used when more information than solely service cost is requested from respondents. RFPs often require respondents to write a proposal which answers narrative questions, provides cost or rate information and describes vendor experience or expertise in particular fields or projects.
- iv. Regulations – RFPs, RFQs and RFIs will follow all applicable Federal Acquisition Regulations, specifically FAR Subpart 15. The CMHPSM will follow all FAR regulations related to solicitation, competition, evaluation, award documentation and retention of competitive procurement.
 - 1) *Electronic Notification* – CMHPSM staff will utilize the most cost-effective, efficient means for notification and solicitation of competitive procurement. In most cases electronic bid notification systems will be used.
 - 2) *Retention* – CMHPSM will follow state of Michigan guidelines related to the retention of RFP materials, specifically General Retention Schedule #20: Community Mental Health Services Programs.

G. Bid Waiver or Non-competitive Procurement

1. A non-competitive process may be used in the following situations:
 - a. The service is available only from a single source.
 - b. There is a public exigency or emergency that will not permit a delay for a competitive bid.
 - c. After solicitation of a number of sources, competition is determined inadequate.
 - d. The services involved are professional (clinical) services of limited quantity or duration.
 - e. The services involved are professional (administrative) services which do not constitute comprehensive management services or significant automated data processing services.
 - f. The services are unique and/or the selection of the service provider has been delegated to the consumer under a self-determination program.
 - g. The services are existing residential services where continuity of care arrangements is of paramount concern.
 - h. With other public entities in accordance with the Intergovernmental Contract Act 35 of 1951.

H. Best Value and Quality Determinations

1. CMHPSM can utilize measures such as: best value, service or material quality, organizational references, past organizational performance and/or CMHPSM staff experience, rather than relying solely on the lowest cost bidder in any procurement determinations.

I. Federal Funding Eligibility (Debarment, State Eligibility)

1. Whether a competitive procurement or noncompetitive solicitation process is used, the managing entity must ensure that organizations or individuals selected and offered contracts have not been previously sanctioned by the Medicaid program resulting in prohibition of their participation in the program. Individuals and organizations contracting with the CMHPSM must be verified to be eligible for federal participation prior to purchasing goods or services by meeting the following standards: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or PIHP; Have not—within a three-year period preceding this agreement—been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; Violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated above; Have not—within a three-year period preceding an agreement—had one or more public transactions (federal, state or local) terminated for cause or default.

J. Federal & State Requirements

1. CMHPSM will ensure full compliance with all of the applicable: Federal CFR regulations, including 2 CFR 200.318-326 as appended, OMB Circulars and any other federal, state or local laws or regulations. The CMHPSM will also ensure compliance with its current Medicaid Agreement with the State of Michigan and the Michigan Medicaid Manual. Federal Acquisition Regulations, CFR regulations and OMB circulars will guide any procurement issues not specifically addressed in the standards of this policy.

K. Affirmative Steps

1. CMHPSM must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus firms are used when possible. The affirmative steps must include those set forth at 2 C.F.R. § 200.321(b). See Chapter V, ¶ 6.

L. Maintaining Records

1. The Uniform Rules require CMHPSM to maintain records sufficient to detail the history of a procurement. These records include, but are not limited to, the following: rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price. 2 C.F.R. § 200.318(i)

VI. EXHIBITS

- A. CMHPSM Procurement Thresholds, Approvals and Requirements Table:

		Procurement Type		
		Purchase of Goods	Administrative, Professional Service Contract, Lease	Specialty Service Contracts (Direct Mental Health or Substance Use Disorder Service)
Procurement Threshold	Micro Purchase \$3,000.00 and under.	Approver: Chief Executive Officer or Chief Executive Officer Designee Requirement: No formal quotes required.	Approver: Chief Executive Officer Requirement: No formal quotes required.	Approver: All specialty service contracts require CMHPSM Board approval. Requirement: RFP/RFQ/RFI or bid waiver signed by Chief Executive Officer.
	Chief Executive Officer \$3,000.01-\$25,000.00	Approver: Chief Executive Officer Requirement: 1. Written quotes required or bid waiver signed by Chief Executive Officer. 2. Purchase Order Required	Approver: Chief Executive Officer Requirement: 1. Written quotes required or bid waiver signed by Chief Executive Officer. 2. Purchase Order Required	
	CMHPSM Board \$25,000.01 and over.	Approver: CMHPSM Board Approval Requirement: 1. RFP/RFQ/RFI or bid waiver signed by Chief Executive Officer. 2. Purchase Order Required	Approver: CMHPSM Board Approval Requirement: 1. RFP/RFQ/RFI or bid waiver signed by Chief Executive Officer. 2. Purchase Order Required	

VII. REFERENCES

- Federal Acquisition Regulation – Volume I: Parts 1 to 51 (Subparts 2.1 and 15); Volume II: Parts 52, 53
- 41 U.S.C. 57(a) and (b) Anti-Kickback Act of 1986
- 45 CFR Part 92: Title 45 – Public Welfare, Subtitle A – Department of Health and Human Services, Part 92 – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 92.36 Procurement
- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- MCL Act 317 of 1968 – Contracts of Public Servants with Public Entities (15.321 - 15.3300) [Updated 12/19/2008]
- Intergovernmental Contract Act 35 of 1951
- Current MDHHS Contract Attachment: Procurement Technical Requirement

Addendum 2 CFR 200.318-326

§ 200.318 General procurement standards.

(a) The [non-Federal entity](#) must use its own documented procurement procedures which reflect applicable [State](#), local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(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.

(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 [§ 200.213](#) Suspension and debarment.

(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.

(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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

§ 200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. 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.

(b) 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](#).

(c) 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.

(d) 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.320 Methods of procurement to be followed.

The [non-Federal entity](#) must use one of the following methods of procurement.

(a) Procurement by [micro-purchases](#). Procurement by [micro-purchase](#) is the acquisition of [supplies](#) or services, the aggregate dollar amount of which does not exceed the [micro-purchase](#) threshold (§ 200.67 Micro-purchase). To the extent practicable, the [non-Federal entity](#) must distribute [micro-purchases](#) equitably among qualified suppliers. [Micro-purchases](#) may be awarded without soliciting competitive quotations if the [non-Federal entity](#) considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, [supplies](#), or other [property](#) that do not cost more than the [Simplified Acquisition Threshold](#). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). 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 bid method is the preferred method for procuring construction, if the conditions in [paragraph \(c\)\(1\)](#) of this section apply.

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

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

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

(iii) 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.

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

(i) Bids must be solicited from an adequate number of known suppliers, 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;

(ii) 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;

(iii) 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;

(iv) 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

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

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type [contract](#) is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The [non-Federal entity](#) must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) [Contracts](#) must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The [non-Federal entity](#) may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor 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 are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

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

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

(3) The [Federal awarding agency](#) or [pass-through entity](#) expressly authorizes noncompetitive proposals in response to a written request from the [non-Federal entity](#); or

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

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75885](#), Dec. 19, 2014; [80 FR 54409](#), Sept. 10, 2015]

§ 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 (1) through (5) of this section.

§ 200.322 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.

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75885](#), Dec. 19, 2014]

§ 200.323 [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 - Cost Principles 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.

§ 200.324 [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.

§ 200.325 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 obligations](#) 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](#).

§ 200.326 Contract provisions.

The [non-Federal entity](#)'s [contracts](#) must contain the applicable provisions described in Appendix II to Part 200 - [Contract Provisions for non-Federal Entity Contracts](#) Under Federal Awards.