

Comparison of Procurement Requirements in 7 CFR 3016.36, 3019.40-48 and 2 CFR 200.317-200.326

| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| 36 | Procurement | 317 | Procurements by states. | 40 | Purpose of procurement standards. |
| 36(a) | States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. <u>Refer to 200.317</u> | 317 <u>Refer to 3016.36(a)</u> | When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. | 40 <u>Refer to 200.318: 3016.36(b)</u> | Sections 3019.41 through 3019.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB. |
| 36(b) | Procurement Standards. | 318 | General procurement standards | 41 | Recipient responsibilities |
| 36(b)(1) | <u>Refer to 200.318 (a); 3019.40</u> Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. | 318(a) <u>Refer to 3016.36 (b)(2); 3019.40</u> | The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. | <u>Refer to 200.318 (b); 3016.36 (b)(2)</u> | The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction. |
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| | | | | 42 | Codes of Conduct |
| 36(b)(2) <u>Refer to 200.318(b); 3019.47</u> | Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. | 318(b) <u>Refer to 3019.47; 3016.36 (b)(2)</u> | Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. | <u>Refer to 200.318 (c)(1); 3016.36 (b)(3)</u> | The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict 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 the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients 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 shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient. |
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| | | | | 43 | Competition |

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| 36(b)(3)(i-iv) Refer to 200.318(c)(1); 3019.42 | <p>Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:</p> <ul style="list-style-type: none"> (i) The employee, officer or agent, (ii) Any member of his immediate family, (iii) His or her partner, or (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. | 318(c)(1) Refer to 3016.36(b)(3)(i-iv);3019.42 | <p>The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must 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.</p> | Refer to 200.319; 3016.36(c) | <p>All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interests as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.</p> |
| | | | | 44 | Procurement Procedures |

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| <p>36(b)(4)</p> <p>Refer to 200.318(d); 3019.44(a)(2)</p> | <p>Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase 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.</p> | <p>318(c)(2) Refer to 3016.36(b)(3)(i-iv); 3019.42&43</p> | <p>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.</p> | <p>44(a)(1-3)</p> <p>Refer to 3016.36(c)(1); 200.319(a)</p> <p>Refer to 200.318(d); 3016.36(b)(4)</p> <p>Refer to 200.319.(c)(1); 3016.36(c)(3)</p> <p>Refer to 200.319.(c)(2); 3016.36(c)(2)</p> <p>Refer to 200.319(a)(6); 3016.36(c)(1)(vi)</p> <p>Not in 200 or 3016.</p> <p>Not in 200 or 3016.</p> | <p>All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (a)(2), and (a)(3) of this section apply.</p> <p>(1) Recipients avoid purchasing unnecessary items.</p> <p>(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.</p> <p>(3) Solicitations for goods and services provide for all of the following:</p> <p>(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.</p> <p>(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.</p> <p>(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.</p> <p>(iv) The specific features of “brand name or equal” descriptions that bidders are required to meet when such items are included in the solicitation.</p> <p>(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.</p> <p>(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.</p> |

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| <p>36(b)(5)</p> <p><u>Refer to 200.318(e)</u></p> | <p>To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.</p> | <p>318(d)</p> <p><u>Refer to 3016.36(b)(4)</u></p> | <p>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.</p> | <p>44(b)(1-5)</p> <p><u>Refer to 200.321; 3016.36(e)</u></p> | <p>Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.</p> <ol style="list-style-type: none"> (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable. (2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises. (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises. (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually. (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises. |

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| | | | | 44(c) <u>Refer to 200.323(d); 3016.36(f)(4)</u> | The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The “cost-plus-a-percentage-of-cost” or “percentage of construction cost” methods of contracting shall not be used. |
| 36(b)(6) <u>Refer to 200.318(f)</u> | Grantees and subgrantees are 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. | 318(e) <u>Refer to 3016.36(b)(5)</u> | To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. | 44(d) <u>Refer to 200.318(h); 3016.36(b)(8)</u> | Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the term and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, “Debarment and Suspension.” |
| 36(b)(7) <u>Refer to 200.318(g)</u> | Grantees and subgrantees are 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. | 318(f) <u>Refer to 3016.36(b)(6)</u> | The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. | 44(e)(1-5) <u>Refer to 200.324(a); 3016.36(g)</u> | Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply. (1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part. |
| | | | | 44(e)(1-5) cont'd | (2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. |

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| | | | | <p>Refer to Appendix II, A of Part 200; 3016.36(d)(1)</p> <p>Refer to 200.319(a)(6); 3016.36(c)(1)(vi)</p> <p>Refer to 200.320(c); 3016.36(d)(1) & (d)(2)</p> <p>Refer to 200.324(b)(5); 3016.36(f)(1)</p> | <p>403(11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.</p> <p>(3) The procurement, which is expected to exceed the small purchase threshold, specifies a “brand name” product.</p> <p>(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.</p> <p>(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.</p> |
| <p>36(b)(8)</p> <p>Refer to 200.318(h); 3019.44(d)</p> | <p>Grantees and subgrantees will make awards 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.</p> | <p>318(g)</p> <p>Refer to 3016.36(b)(7)</p> | <p>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.</p> | | |
| <p>36(b)(9)</p> <p>Refer to 200.318(i); 3019.46(a-c)</p> | <p>Grantees and subgrantees will maintain records sufficient to detail the significant history of a 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.</p> | <p>318(h)</p> <p>Refer to 3016.36(b)(8); 3019.46(a-c)</p> | <p>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.</p> | | |

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| 36(b)(10)(i-ii) Refer to 200.318(j)(1)(i-ii) | Grantees and subgrantees will use time and material type contracts only—(i) After a determination that no other contract is suitable, and (ii) If the contract includes a ceiling price that the contractor exceeds at its own risk. | 318(i) Refer to 3016.36(b)(9): 3019.46(a-c) | 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 | | |
| 36(b)(11) | Grantees and subgrantees alone will 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 grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction. | 318(j)(1)(i-ii) Refer to 3016.36(b)(10) | (1)The non-Federal entity may use time and material type contracts 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 material 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. | | |
| 36(b)(12)(i-ii) | Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to: (i) Violations of Federal law or regulations and the standards of this section | 318(j)(2) | (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 | | |

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| | (violations of State or local law will be under the jurisdiction of State or local authorities) and (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee. | | controls. | | |
| | | 318(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. | | |
| 36(c) | Competition | 319 | Competition | 45 | Cost and price analysis |
| 36(c)(1)(i-vii) <u>Refer to 200.319(a): 3019.43</u> | All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §3016.36. Some of the situations considered to be restrictive of competition include but are not limited to: (i) Placing unreasonable requirements on firms in order for them to qualify to do business, (ii) Requiring unnecessary experience and excessive bonding, (iii) Noncompetitive | 319(a)(1-7) <u>Refer to 3016.36(c)(1): 3019.43</u> | 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, and invitations for bids or requests for proposals must be excluded from competing | | Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. |

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| | pricing practices between firms or between affiliated companies, (iv) Noncompetitive awards to consultants that are on retainer contracts, (v) Organizational conflicts of interest, (vi) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and (vii) Any arbitrary action in the procurement process. | | 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. | | |
| 36(c)(2) | Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection | 319(b) | The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection | | |

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| | <p>criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.</p> | | <p>criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.</p> | | |
| <p>36(c)(3)(i-ii) <u>Refer to 200.319.(c)(1): 3019.44(a)(3)(i)</u></p> | <p>Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.</p> | <p>319(c)(1-2) <u>Refer to 3016.36(c)(3): 3019.44(a)(3)(i)</u></p> | <p>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</p> | | |

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| | 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 equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. | | 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. | | |
| 36(c)(4) | (4) Grantees and subgrantees will 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, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period. | 319(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. | | |
| 36(d) | Methods of procurement to be followed. | 320 | Methods of procurement to be followed. | 46 | Procurement Records |
| 36(d)(1) Refer to 200.320(b); 3019.44(e) | (1) Procurement by <i>small purchase procedures</i> . 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 fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.320(a) | 320(a) New | 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 \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). 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 | 46(a-c) | Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) Basis for contractor selection, (b) Justification for lack of competition bids or offers are not obtained, and (c) Basis for award cost or price. |

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| <p>36(d)(2)(i-ii)</p> <p>Refer to 200.320(c); 3019.44(e)(4)</p> | <p>Procurement by <i>sealed bids</i> (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 §3016.36(d)(2)(i) apply. (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 and 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) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids; (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond; (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids; (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 shall 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.</p> | <p>320(b)</p> <p>Refer to 3016.36(d)(1); 3019.44(e)(2)</p> | <p>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.</p> | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| <p>36(d)(3)(i-v)</p> <p>Refer to 200.320(d)(1)</p> | <p>Procurement by <i>competitive proposals</i>. 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: (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical; (ii) Proposals will be solicited from an adequate number of qualified sources; (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees; (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and (v) Grantees and subgrantees 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.</p> | <p>320(c)(1)(i-iii)</p> <p>Refer to 3016.36(d)(1)&(2); 3019.44(e)(4)</p> | <p>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.</p> | | |
| | | 320(c)(2)(i-v) | If sealed bids are used, the following | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | | | <p>requirements apply: (i) The invitation for bids will be publicly advertised and 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; (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 publicly opened at the time and place prescribed in the invitation for bids; (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.</p> | | |
| <p>36(d)(4)(i-iii) Refer to</p> | <p>Procurement by <i>noncompetitive proposals</i> is procurement through solicitation of a proposal from only one source, or after</p> | <p>320(d)(1) Refer to</p> | <p>Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one</p> | | |

Comparison of Procurement Requirements in 7 CFR 3016.36, 3019.40-48 and 2 CFR 200.317-200.326

| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| <u>200.320(f)(1-3)</u> | solicitation of a number of sources, competition is determined inadequate. (i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies: (A) The item is available only from a single source; (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (C) The awarding agency authorizes noncompetitive proposals; or (D) After solicitation of a number of sources, competition is determined inadequate. (ii) Cost analysis, <i>i.e.</i> , verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required. (iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section. | <u>3016.36(d)(3)(i-v)</u> | 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; | | |
| | | 320(d)(2) | (2) Proposals must be solicited from an adequate number of qualified sources; | | |
| | | 320(d)(3) | (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients; | | |
| | | 320(d)(4) | (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | | | other factors considered; and | | |
| | | 320(d)(5) | (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. | | |
| 36(e) <u>Refer to 200.321; 3019.44(b)</u> | Contracting with small and minority firms, women's business enterprise and labor surplus area firms. | 320(e) | Reserved | 47 | Contract Administration |
| 36(e)(1) | (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. | | | 47 | A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract. |
| 36(e)(2) | Affirmative steps shall include: (i) Placing qualified small and minority businesses and women's business enterprises on solicitation | | | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | lists; (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section. | | | | |
| 36(f) | Contract cost and price. | | | 48 | Contact Provisions |
| 36(f)(1) | (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract | 320(f)(1) Refer to | Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a | 48(a) Refer to | The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | <p>modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.</p> | <p>3016.36(d)(4)(i-iii)</p> | <p>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;</p> | <p>Appendix II of Part 200; 3016.36(d)</p> | <p>contracts. The following provisions shall also be applied to subcontracts.</p> <p>(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.</p> |
| 36(f)(2) | <p>Grantees and subgrantees will 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 will be given</p> | 320(f)(2) | <p>The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;</p> | 48(b) | <p>All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract</p> |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | | | | | <p>may be required within the time specified.</p> <p>(2) 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.</p> <p>(3) 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 statute of all persons supplying labor and material in the execution of the work provided for in the contract.</p> <p>(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, “Surety Companies Doing Business with the United States.”</p> |
| 36(f)(4) | The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. | 320(f)(4) | After solicitation of a number of sources, competition is determined inadequate. | 48(d) | All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| <p>36(g)(1)</p> <p>Refer to 200.324(a); 3019.44(e)(1-5)</p> | <p>Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.</p> | | | 48(e) | <p>All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.</p> |
| <p>36(g)(2)(i-v)</p> | <p>Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:</p> <ul style="list-style-type: none"> (i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or (ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one | | | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | <p>bid or offer is received in response to a solicitation; or (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a “brand name” product; or (iv) The proposed award 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 (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.</p> | | | | |
| 36(g)(3)(i-ii) | <p>A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section. (i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-</p> | | | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | <p>party contracts are awarded on a regular basis. (ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.</p> | | | | |
| 36(h)(1) | <p>Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows: (1) A bid guarantee from each bidder equivalent to five percent of the bid price.</p> | | | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified. | | | | |
| 36(h)(2) | 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. | | | | |
| 36(h)(3) | <i>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.</i> | | | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
|--|--|--|-------------|--|------------|
| <p>36(i)(1-13) Refer to Appendix II of Part 200</p> | <p><i>Contract provisions.</i> A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold) (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000) (3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees) (4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair) (5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation) (6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers) (7) Notice of awarding agency requirements and regulations pertaining to reporting. (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data. (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000) (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).</p> | | | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | | 321 Refer to 3016.36(e); 3019.44(b) | Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. | | |
| | | 321(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. | | |
| | | 321(b)(1-6) | 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. | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | | 322 New | Procurement of recovered materials. | | |
| | | 322 | A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. | | |
| | | 323 | Contact Cost and price | | |
| | | 323(a) <u>Refer to 3016.36(f); 3019.45</u> | The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. | | |

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| | | | | | |
| | | 323(b) | <p>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> | | |
| | | 323(c) | <p>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.</p> | | |
| | | 323(d) | <p>The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.</p> | | |
| | | 324 | <p>Federal awarding agency or pass-through entity review.</p> | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
|--|---------|--|---|--|------------|
| | | 324(a) Refer to 3016.36(g); 3019.44(e) | 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. | | |
| | | 324(b)(1-5) Refer to 3016.36(g); 3019.44(e) | 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. | | |

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| | | 324(c)(1-2) | <p>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.</p> | | |

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| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | | 325 | Bonding requirements. | | |
| | | 325(a) <u>Refer to 3016.36(h): 3019.48(c)</u> | For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or 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. | | |
| | | 325(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. | | |
| | | 325(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. | | |

Comparison of Procurement Requirements in 7 CFR 3016.36, 3019.40-48 and 2 CFR 200.317-200.326

| | 3016.36 | | 200.317-326 | | 3019.40-48 |
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| | | 326 | Contract Provisions. | | |
| | | 326 Refer to 3016.36(i); 3019.48 | 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. | | |

Comparison of Procurement Requirements in 7 CFR 3016.36, 3019.40-48 and 2 CFR 200.317-200.326

| Appendix II to Part 200 | | | | | |
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| | | <p>Appendix II to Part 200</p> <p>Refer to 3016.36(i); 3019.48</p> | <p>Contract Provisions for Non-Federal Entity Contracts Under Federal Awards</p> | | |
| | | | <p>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.</p> | | |
| | | A | <p>Contracts for more than the simplified acquisition threshold currently set at \$150,000, 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> | | |
| | | B | <p>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> | | |

Comparison of Procurement Requirements in 7 CFR 3016.36, 3019.40-48 and 2 CFR 200.317-200.326

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| | | C | <p>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.”</p> | | |
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Comparison of Procurement Requirements in 7 CFR 3016.36, 3019.40-48 and 2 CFR 200.317-200.326

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| | | D | <p>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.</p> | | |
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Comparison of Procurement Requirements in 7 CFR 3016.36, 3019.40-48 and 2 CFR 200.317-200.326

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| | | E | <p>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.</p> | | |
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Comparison of Procurement Requirements in 7 CFR 3016.36, 3019.40-48 and 2 CFR 200.317-200.326

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| | | 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 | Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201). | | |

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| | | I | 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 Excluded Parties List System 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.” The Excluded Parties List System in SAM 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. | | |
| | | J | Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more 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. | | |
| | | K | See §200.322 Procurement of recovered materials. | | |