

DIVISION 600 – FEDERAL GRANT PROCUREMENT RULES**10.600 Purpose and Applicability**

This Division is intended to ensure County compliance with respect to Procurements with federal funds in accordance with the federal uniform standards codified in the Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200 (hereinafter the “Uniform Guidance”). This Division applies only to Procurements using federal grant awards/monies covered by the provisions of the Uniform Guidance, unless specifically stated otherwise. This Division shall apply to all County departments that Contract for or purchase Goods and Services through grants funded directly or indirectly, in whole or in part, with federal grant funds. All other Procurement standards promulgated by State Law and Chapter 10 of the Coos County Rules remain applicable unless in direct conflict with this Division or other applicable Federal Law. If any other provision of the Coos County Rules is more restrictive than the rules in this Division, the County shall follow the more restrictive rule.

10.605 General Procurement Standards and Policies

- (1) **Responsibility and Oversight.** The standards in this Division do not relieve Coos County from the responsibilities arising under its Contracts. The County is fully responsible 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. Coos County staff is responsible for developing all Contracts and conducting all Procurements in accordance with this Division and is responsible for determining the Procurements to which this Division applies. Matters concerning violation of statute are to be referred to such Federal, State, or local authority as may have proper jurisdiction.
- (2) **Conflicts of Interest Policy.** No employee, officer, or agent of Coos County shall participate in the selection, award, or administration of a Contract subject to this Division if he or she has a real or apparent conflict of interest. Such a conflict of interest arises 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 any firm, person, or entity selected or considered for a Contract. Coos County may take appropriate disciplinary action for violations of this conflict of interest rule by its officers, employees, or agents. Coos County reserves the right to set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of little value.
- (3) **Economic Efficiency Considerations.** Coos County will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out Procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease alternatives, and any other appropriate analysis to determine the most economical approach. Coos County will, where feasible, enter into intergovernmental and inter entity purchasing agreements that encourage economic efficiency.

(4) **Responsible Contractor Selection**

- (a) Contracts shall be made only with responsible Contractors who possess the ability to perform successfully under the terms 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.
- (b) The County shall search for Contractors on the System for Award Management (SAM) at www.SAM.gov. Before the County engages a Contractor, the County must conduct a SAM search by name, tax identification number, or another characteristic to make sure the person or entity hasn't been suspended or debarred from performing federally funded work. If the County does engage a prohibited Contractor, the federal awarding agency could refuse to reimburse costs or request a return of previously awarded funds. The County shall retain documentation that the Contractor was verified in SAM.

(5) **Contracting with Small Businesses, Minority Owned Firms, and Women's Business Enterprises.** When feasible, efforts shall be made to procure goods and services subject to this Division from small businesses, minority-owned firms, and women's business enterprises. When soliciting goods or services, the County shall take the following steps to further this goal:

- (a) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) Use the services and assistance, as appropriate, of such organizations as 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 businesses.

(6) **Documentation and Records Retention.**

- (a) At a minimum, the County shall compile and maintain records sufficient to document the history of all Procurements. The County department that received Federal grant funds is further responsible for maintaining records satisfying the requirements of any applicable grant agreement and/or law.

- (b) For Procurements in excess of \$150,000, the County shall additionally keep, at a minimum, the following records:
 - (A) Documented rationale for the method of Procurement chosen;
 - (B) Documentation of the criteria by which a vendor or Contractor was selected or rejected, as the case may be; and
 - (C) The basis for the Contract price, including the cost and price analysis performed under County Rule (CR) 10.625;
- (c) In addition to the applicable requirements of public records law or the terms of any agreements, records retained pursuant to this Division shall generally be kept for at least three (3) years in accordance with 2 CFR 200.333.

10.610 Standards for Encouraging Competition

- (1) **General Standards.** All Procurement will be conducted in a manner providing for full and open competition and not restrictive of competition. The County shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. To eliminate unfair competition, contractors who develop or draft grantee applications or contract specifications or requirements (or statements of work, invitations for bids or requests for proposals) must be excluded from the competition for that procurement. Solicitations for bids should clearly state all the requirements a contractor must fulfill in order for the bid or offer to be evaluated by the County. The Procurement should be given to the contractor whose bid or offer is responsive to the solicitation, and is the most advantageous to the County (considering price, quality, and other applicable factors). This means that the County does not have to accept the lowest bid received because other factors, such as quality of the product or service record of the vendor also may be considered in making a Procurement decision.
- (2) **Geographic Preferences Prohibited.** For Procurements under this Division, use of statutorily or administratively imposed state of local geographical preferences in the evaluation of bids or proposals is prohibited, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. 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.

10.615 Procurement Instruments; Prohibited Contracts

The type of procuring instruments used (e.g. fixed price contract, cost reimbursable contract, purchase orders, and incentive contracts) shall be determined by the County, 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 or construction cost” methods of contracting shall not be used.

10.620 Procurement Methods

When using Federal funds, the County must use the Procurement methods specified in this Division, which mirror those specified in the Uniform Guidance at 2 CFR 200.320. The complete requirements for Procurements, including Competitive Sealed Bidding, Competitive Sealed Proposals, and all other Competitive Processes are fully detailed elsewhere in Chapter 10, and those provisions should be read in conjunction with any additional processes required by this Division. Where the dollar values provided in this Division conflict with any other portion of the County Rules, the lower value shall be used in order to determine the proper Procurement method.

- (1) **Procurement by Micro-Purchases.** Procurement by micro-purchase is any Procurement of Goods or Services, the aggregate dollar amount of which does not exceed \$10,000. Micro-purchases subject to this Division do not require Competitive Process.
- (2) **Procurement by Small Purchase Procedures.** Small purchase procedures are those relatively simple and informal Procurement methods that may be used for Procurements in an amount not to exceed \$150,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Depending on the nature of a Procurement, the following Procurement methods will satisfy the requirements of this subsection:
 - (a) For Procurement of Goods or Services subject to this Division, the intermediate Procurement method outlined in CR 10.106 shall be followed where applicable.
 - (b) For Procurement of Personal Services subject to this Division, CR 10.230 shall be followed where applicable.
 - (c) For Procurements for Public Improvements, the intermediate Procurement methods set forth in CR 10.310 shall be followed where applicable.
- (3) **Procurement by Sealed Bids and Competitive Proposals.** Except for as specified in subsection (4) below, for Procurements under this Division exceeding \$150,000, “Sealed Bids” and “Competitive Proposals” must be used. For the purposes of this Division, “Competitive Sealed Proposals” and “Requests for Proposals,” as defined in CR 10.030, shall be deemed to be forms of Competitive Proposals as that term is used in this Division. “Competitive Sealed Bidding” and “Invitations to Bid,” as those terms are defined in CR 10.030, shall be considered as forms of Sealed Bids as that term is used in this Division.
 - (a) The County should only solicit Sealed Bids (Competitive Sealed Bidding; Requests for Proposals) under this Division when the following conditions are present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and

- (C) The Procurement lends itself to a firm fixed price Contract and the selection of the successful bidder can be made *principally* on the basis of price.
- (b) If Sealed Bids are used, the requirements apply:
 - (A) The invitation for bids, which will include any specifications and pertinent attachments, must define the items, services, and any additional criteria that may apply in order for the bidder to properly respond;
 - (B) A firm fixed price contract award will be made in writing to the lowest responsive *and* responsible bidder.; and
 - (C) Any or all bids may be rejected if there is a sound documented reason.
- (c) The County may conduct Procurements by soliciting Competitive Proposals (Competitive Sealed Proposals; Requests for Proposals) under this Division when conditions are generally not appropriate for the use of Sealed Bids. Examples of this include, but are not limited to, where a fixed price or cost-reimbursement type Contract will be awarded by the County.
- (4) **Procurement by Noncompetitive Proposals.** For all Procurements exceeding \$10,000 in value, Competitive Process pursuant to subsections (2) and (3) above is required, with the following exceptions:
 - (a) The item is available only from a single source;
 - (b) There is a public exigency or emergency that will not permit a delay resulting from Competitive Process;
 - (c) The Federal Awarding Agency or pass-through entity expressly authorized noncompetitive proposals in response to a written request from the County; or
 - (d) After solicitation of a number of sources, competition is determined inadequate.

10.625 Cost and Price Analysis

Coos County will perform a cost or price analysis in connection with every Procurement action in excess of \$150,000. The method and degree of analysis is dependent on the facts surrounding the particular Procurement situation, but as a starting point, independent estimates will be made before receiving bids or proposals.

- (1) *Cost analysis* is the review and evaluation of each element of cost to determine whether it is reasonable, allocable to the applicable grant program, and an allowable cost for that grant program. Cost analysis involves an examination of all the elements used in calculating a Contract's total estimated cost. For example, when fixed-price Contracts are based on cost estimates, the County should perform a cost analysis to determine the reasonableness of the prices.
- (2) *Price analysis* is the process of comparing relevant marketplace prices. These include comparing offered prices including discounts with those listed in commercial catalogs, or with those recently submitted for similar services.

10.630 Mandatory Contract Terms

Where applicable, Contracts subject to this Division shall contain the following terms:

- (1) Contracts in excess of \$150,000 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.
- (2) All Contracts in excess of \$10,000 shall describe conditions under which the Contract may be terminated for default as well as conditions where the Contract may be terminated because of circumstances beyond the control of the Contractor.
- (3) All Contracts and agreements subject to this Division shall use the language required in Appendix II to Part 200 of the Uniform Guidance —Contract Provisions for non-Federal Entity Contracts Under Federal Awards, in addition to other provisions required by the Federal agency or County, as set forth in Exhibit A of this Division.

10.635 Checklist for Procurements Involving Federal Grant Money

Each Department Head or Coos County employee responsible for solicitation of goods and services through the use of Federal funds shall complete the checklist, attached hereto as Exhibit B, for each Procurement and retain the completed checklist in the record of the Procurement process.

10.640 Interpretation and Clarification

Questions regarding the intent, application, or content of this Division shall be directed to the County Finance Department and/or County Counsel.

Exhibit A Required Contract Terms

Contractual provisions subject to this Division must cover the following, where applicable:

1. 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.”
2. 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.
3. 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.
4. 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.

u5. 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).

6. 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 government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

Exhibit B

Checklist for Procurements Involving Federal Grant Money

- Determine if proposed Procurement involves Federal money, in whole, or in part. If Federal money is used, complete this checklist.
- Review all technical specifications from the Federal awarding agency or pass-through entity and any grant-related materials prior to the solicitation.
- Review the Coos County Subrecipient Monitoring Policy to determine if the County will be acting as a pass-through entity, and if so, adhere to all requirements set forth in that policy.
- Estimate the value of the proposed Procurement in order to determine the appropriate Procurement method required by the Federal Grant Procurement Rules and all other applicable Coos County Rules. Proceed with the most restrictive applicable Procurement rules.
 - Consult with County Counsel as necessary to determine the proper Procurement rules to follow.
- Identify a record-keeping procedure for the proposed Procurement; ensure that all records are maintained throughout the Procurement process; and assign an individual responsible for keeping and maintaining the records within the department.
- Prepare the Solicitation Documents for the proposed Procurement under the appropriate method as set forth in the Coos County Rules, following the applicable provisions of the Federal Grant Procurement Rules.
- Ensure positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises in accordance with CR 10.605(5).
- Ensure that profit is negotiated as a separate element of price if there is not price competition as part of the procurement.
- If the solicitation involves “Federally Funded Transit Projects,” ensure compliance with all Federal “Buy America” requirements.
- Ensure that the Conflict of Interest policy outlined in CR 10.605(2) is followed. Consult with Counsel’s Office is necessary.
- Search for all responsive Contractors on the System for Award Management (SAM) at www.SAM.gov prior to engaging any responsive contractors.
- Ensure all contracts contain the required language set forth in the Exhibit A of the Coos County Federal Grant Procurement Rules, and for all contracts exceeding \$10,000.00, ensure that “termination for cause” and “termination for convenience” are properly addressed, including without limit, the terms for each and the basis for settlement. Contact Counsel’s Office as necessary to determine appropriate contract language.

- If the proposed Procurement will likely exceed \$150,000, ensure that the following additional requirements are followed:
 - Document the Procurement as specifically required by CR 10.605(6)(b).
 - Complete and document a reasonable cost/price analysis of the Procurement as required by CR 10.625.
 - Ensure that all solicitation documents contain the following (in addition to any other applicable provision of the Coos County Rules):
 - A clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not contain features which unduly restrict competition;
 - Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals;
 - 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.

- Let the Contract and update the Procurement records. Maintain the record sufficient to be available upon request from the Federal awarding agency, in compliance with CR 10.605(6).