

UNIVERSITY OF CENTRAL MISSOURI FEDERAL PROCUREMENT MANUAL

Effective February 28, 2023

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Summary:

It is the purpose of this document to provide procurement guidance to University of Central Missouri staff working with Federal Grant funds according to the standards listed in the guidance listed in the Electronic Code of Federal Regulations effective February 1, 2023. The basis for the information in this manual comes from the documents listed below and the CFR's directly related to the grant provided by the Federal Government or the Grantee. The University of Central Missouri will utilize the information from this manual in order to ensure that procurements are being handled appropriately, the process is transparent, and all areas of Procurement accountability are addressed.

This document does not address all aspects of 2 CFR 200. Staff will be responsible for obtaining the information required for the Accounting portion of the grant money and any other stated requirements for Procurement.

The basis for this document is gleaned from the following;

1. 2 CFR 200 (<https://www.ecfr.gov/current/title-2/part-200>)
2. COFAR website: <http://cfo.gov/cofar>
3. UCM Procurement and Materials Management Guidelines and Operational Procedures Manual (September 2020)

The thresholds and other information in this document reflect both the Federal requirements and the University of Central Missouri requirements. In particular the dollar thresholds for UCM are related to UCM Procurement Code.

These guidelines will be followed for all Federally funded grant purchases effective July 1, 2023.

This document is subject to revisions as required by the University of Central Missouri and the Federal Government.

In any circumstance when thresholds conflict with each other, the most stringent threshold takes precedence.

There are six types of procurements which will be used by UCM staff when using Federal Grant money. They are as follows:

Micro-Purchase Process

1. The following Micro-Purchase process will be followed any time Federal Grant funds are used by UCM Departments for one-time purchases of commodities or services that do not exceed \$10,000.00 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act):
2. The department must establish the need for the purchase, establish specifications and identify sources.
3. The department shall have a full understanding of what their specific CFR requirements are before proceeding with a Micro-Purchase.
4. All Micro-Purchases will be conducted under the following guidelines:
 - a. The entity must, to the extent practicable, distribute these purchases equitably among qualified suppliers.
 - b. Micro-purchases may be awarded without soliciting competitive quotations if the authorized UCM Staff person considers the price to be reasonable.
 - c. No rate competitive quotations are necessary for the purchase.
 - d. No cost or price analysis is required.
 - e. The entity must make the purchase from any one of a number of suppliers.
 - f. Following receipt of the product, the department shall write or stamp the invoice with the words "Micro-Purchase" and attach the invoice copy which is kept in a designated file at the department.
 - g. The department shall keep all Micro-Purchases in a file for easy accessibility and auditing.
 - h. The Procurement Dept. shall audit various departments using Federal Grant money on a random basis to ensure that this process is being followed and to discuss possible Annual Supply contract needs.
5. Department shall utilize and award to "Small and Minority Firms, Women's Business Enterprise" when reasonable and possible.
6. Departments shall request email or written verification that it is not on the Federal or State Excluded Parties list and thus is eligible to do business with UCM using Federal funds.
 - a. Place documentation in the file that the approved vendor is not in the excluded category.
7. A PCard is recommended for payment of these items according to UCM PCard policy.

* At no time will the policy listed herein supersede the Federal Grant Procurement Requirements set by the Grantor. It is up to the Department to read and understand the requirements of their grant and to work with the Procurement Department to ensure compliance for all purchases.

Small Purchase Process

1. **The following Small Purchase process will be followed any time Federal Grant funds are used by University of Central Missouri Departments to purchase commodities or services that exceed \$10,000.00 BUT under \$25,000.00**
2. The department must establish the need for the purchase, establish specifications and identify sources.
3. The department shall have a full understanding of what their specific CFR requirements are before proceeding with a Small Purchase.
4. All Small Purchases will be conducted under the following guidelines:
 - a. Contact UCM Procurement Department to procure needed Supply, Service or Equipment. The Procurement Department will issue these quotes using the UCM Procurement Ebid site.
 - b. Complete Independent Cost Estimate (ICE) and supporting documentation for Supplies, Service or Equipment.
 - bb. ICE shall be completed by getting online pricing for similar or same products in the same quantities.
 - c. Forward the ICE, specifications, and any supporting documentation to Procurement for processing as an Informal Quote.
 - d. Procurement will issue the quote for a predetermined time which will correspond with the difficulty of the service and/or availability of Vendors.
 - cc. Quote will include all Federal Clauses as required.
 - e. Procurement will send bid results to Department who will then review Quotes for lowest price or best value and complete the Cost Price Analysis (CPA) form.
 - ee. Department will tell the complete story of the bid results in the CPA and other documentation which results in an award recommendation being made.
 - f. Award recommendation and CPA will be emailed to Procurement for award processing and Contract or PO execution.
 - g. Department shall issue a requisition in UCMarket for approvals and issuance of a PO.
 - h. Procurement will review the System for Award Management, SAM.gov to ensure that the vendor is not on the excluded list.
 - gg. A copy of the SAM report will be placed in the Procurement file.
 - i. Department will develop a documentation folder for all Small Purchase procurements for use by the Contract Administrator to meet performance reporting requirements and audit needs.
 - hh. The Contract Administrator is a designated person in the department who is responsible for ensuring that all contract requirements are met including but not limited to, timely delivery, correct quantities, products meeting specifications and charges being consistent with the Contract or PO.
 - hhh. Contracts resulting from Small Purchases may be entered into the Contract Management System.
 - i. Following the receipt of the supply or completion of the service, the department will notify Procurement of the completion date and provide feedback on the Vendor's performance.

*** At no time will the policy listed herein supersede the Federal Grant Procurement Requirements set by the Grantor. It is up to the Department to read and understand the requirements of their grant and to work with the Procurement Department to ensure compliance for all purchases.**

*** All construction projects with a cost over \$2,000.00 must follow procedures and include proper information for applying Davis Bacon wage rates unless provisions in the CFR state otherwise.**

**** Construction contracts will require the designation of a Contract Administrator and a Construction Administrator.**

*** For a specific procurement, you must exclude from bidding or proposal submission any Contractors who have been involved in development of the procurement. For example, you must not accept bids or proposals from Contractors who have developed or drafted specifications, requirements, statements of work, and/or requests for proposals for this particular procurement.**

Sealed Bid Purchase Process

1. **The following Sealed Bid Purchase process will be followed any time Federal Grant funds are used by University of Central Missouri Departments to purchase commodities or services that exceed \$25,000.00.**
2. The department must establish the need for the purchase, establish specifications and identify sources.
3. The department shall have a full understanding of what the CFR requirements are before proceeding with a Sealed Bid Purchase.
4. All Sealed Bid Purchases will be conducted under the following guidelines:
 - a. Contact UCM Procurement Department to procure needed Supplies, Service or Equipment. The Procurement Department will issue these bids using the UCM Procurement Ebid site.
 - b. Complete Independent Cost Estimate (ICE) and supporting documentation for Supplies, Service or Equipment.
 - bb. ICE shall be completed by getting online pricing for similar or same products in the same quantities.
 - c. Forward the ICE, specifications and any supporting documentation to Procurement for processing as a Formal Bid.
 - d. Procurement will issue Formal Bid for a minimum of ten (10) business days using the UCM Ebid system which will notify registered Vendors via email and be available worldwide on the web.
 - dd. Quote will include all Federal Clauses as required.
 - e. Procurement will send notice to newspapers according to policy for advertisement at least one time upon bid release.
 - f. All bids will be opened for public viewing in the Ebid system at the time and place prescribed in the invitation.
 - g. A Firm Fixed Price or Annual Supply/Requirement award will be made to the lowest, responsive, and responsible Bidder.
 - h. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest.
 - i. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
 - j. Procurement will send bid results to Department who will then review bids for lowest price or best value and complete the Cost Price Analysis (CPA) form.
 - jj. Department will tell the complete story of the bid results in the CPA and other documentation which results in an award recommendation being made.
 - jjj. A firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
 - jjjj. Any or all bids may be rejected if there is a sound documented reason.
 - k. Award recommendation and CPA will be emailed to Procurement for award processing and Contract or PO execution.
 - l. A requisition will be issued in UCMarket and a contract and/or PO will be issued.
 - m. Procurement will review the System for Award Management, SAM.gov to ensure that the Vendor is not excluded from procurement using Federal funding.
 - li. A copy of the SAM report will be placed in the Procurement file.
 - m. Department will develop a documentation folder for all Sealed Bid procurements for use by the Contract Administrator to meet performance reporting requirements and audit needs.
 - mm. Contracts issued may be entered into the Contract Management System.
 - n. Following the receipt of the supply or completion of the service, the department will notify Procurement of the completion date and provide feedback on the Vendor's performance.

*** At no time will the policy listed herein supersede the Federal Grant Procurement Requirements set by the Grantor. It is up to the Department to read and understand the requirements of their grant and to work with the Procurement Department to ensure compliance for all purchases.**

*** All construction projects with a cost over \$2,000.00 must follow procedures and include proper information for applying Davis Bacon wage rates unless provisions in the CFR state otherwise..**

**** Construction contracts will require the designation of a Contract Administrator and a Construction Administrator.**

*** For a specific procurement, you must exclude from bidding or proposal submission any contractors who have been involved in development of the procurement. For example, you must not accept bids or proposals from contractors who have developed or drafted specifications, requirements, statements of work, and/or requests for proposals for the procurement.**

Competitive Proposal Purchase Process – Non-A/E Services

1. The Competitive Proposal process will be followed any time Federal Grant funds are used by University of Central Missouri Departments to purchase commodities or services using a process which is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded and is generally used when conditions are not appropriate for the use of sealed bids.
 - 1.1. This process is not applicable to A/E selection using a Qualifications-Based Selection process. (See Competitive Purchase Process – A/E Services)
2. Establish need for purchase, establish specifications and identify sources.
3. The department shall have a full understanding of what their specific CFR requirements are before proceeding with a Competitive Proposal.
4. All Competitive Proposals will be conducted under the following guidelines:
 - a. Contact UCM Procurement Department to procure needed Supplies, Service or Equipment. The Procurement Department will issue these RFP's using the UCM Procurement Ebid site.
 - b. Complete Independent Cost Estimate (ICE), RFP Intake Form and supporting documentation for Supplies, Service or Equipment.
 - bb. ICE shall be completed by getting online or other pricing for similar or same products or services.
 - c. Forward the ICE, RFP Intake Form, Specifications and any supporting documentation to Procurement for processing as a Competitive Proposal.
 - cc. Requests for Proposals must be publicized and identify all evaluation factors and their relative importance.
 - ccc. The Procurement Department will assist in the scoring process and Selection Committee assignments.
 - d. Procurement will issue Proposal for a minimum of ten (10) business days using the UCM Ebid system which will notify registered Vendors via email and be available worldwide on the web.
 - dd. RFP will include all Federal Clauses as required.
 - e. Procurement will send notice to newspaper/s for advertisement at least one time upon bid release.
 - f. All proposals will be publicly opened via the ebid system at the time and place prescribed in the invitation.
 - g. Any response to publicized Requests for Proposals must be considered to the maximum extent practical.
 - h. Contracts must be awarded to the responsive and responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
 - i. Procurement will send proposals to the Selection Committee who will then review them, score them and determine if interviews are necessary for an award.
 - j. Following the scoring and/or evaluation procedures outlined in the specifications, the department may negotiate for the lowest possible cost based upon the agreed upon scope of services and then complete the Cost Price Analysis (CPA) form.
 - k. Department will tell the complete story of the proposal response and award in the CPA and other documentation which results in an award recommendation being made.
 - kk. Any or all proposals may be rejected if there is a sound documented reason.
 - l. Award recommendation and CPA will be emailed to Procurement for award processing and Contract execution.
 - m. A requisition will be entered by the department and a contract/PO will be issued by Procurement.
 - m. Procurement will review the System for Award Management, SAM.gov to ensure that the vendor is not excluded for procurement using Federal funding.
 - mm. A copy of the SAM report will be placed in the Procurement file.
 - n. Department will develop a documentation folder for all Competitive Proposals for use by the Contract Administrator to meet performance reporting requirements and audit needs.
 - nn. The contract information may be loaded into the Contract Management System.
 - o. Following the receipt of the completion of the service, the department will notify Procurement of the completion date and provide feedback on the Vendor's performance.

* At no time will the policy listed herein supersede the Federal Grant Procurement Requirements set by the Grantor. It is up to the Department to read and understand the requirements of their grant and to work with the Procurement Department to ensure compliance for all purchases.

* For a specific procurement, you must exclude from bidding or proposal submission any contractors who have been involved in development of the procurement. For example, you must not accept bids or proposals from contractors who have developed or drafted specifications, requirements, statements of work, and/or requests for proposals for the procurement

Competitive Proposal Purchase Process – A/E Services

1. The Competitive Proposal process will be followed any time Federal Grant funds are used by University of Central Missouri Departments to obtain Architect/Engineering (A/E) services.
 - 1.1 The process will use procedures for qualifications-based procurement of A/E professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
 - 1.2 This process is applicable only for A/E proposals.
 - 1.3 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.
2. Establish need for procurement of A/E professional services, establish specifications and identify sources.
3. The department shall have a full understanding of what their specific CFR requirements are before proceeding with a Competitive Proposal.
4. All Competitive Proposals using Federal Grant Funds shall follow the UCM Procurement Manual as long as they don't conflict with these Federal requirements or those listed in the CFR.
5. All Competitive Proposals will be conducted under the following guidelines:
 - a. Contact Procurement Department to procure needed A/E Services using the Procurement Ebid site.
 - b. Complete Independent Cost Estimate (ICE), RFP Intake Form and supporting documentation for service.
 - bb. ICE shall be completed by requesting an estimate or using historical data for similar or same services.
 - c. Forward the ICE, RFP Intake Form, Specifications and any supporting documentation to Procurement for processing as a Competitive Proposal.
 - cc. Requests for proposals must be publicized and identify all evaluation factors and their relative importance.
 - ccc. Department must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
 - cccc. The Procurement Department will assist in the scoring process and Selection Committee assignments.
 - d. Procurement will issue Proposal for a minimum of ten (10) business days using the Ebid system which will notify registered Vendors via email and be available worldwide on the web.
 - dd. RFP will include all required Federal Clauses as required
 - e. Procurement will send notice to select newspapers for advertisement at least one time upon bid release.
 - f. All proposals will be publicly opened via the Ebid system at the time and place prescribed in the invitation.
 - g. Any response to publicized Requests for Qualifications must be considered to the maximum extent practical.
 - h. Contracts must be awarded to the responsible firm whose Proposal is most advantageous to the program, with price and other factors considered.
 - i. Procurement will send Proposals to the Selection Committee who will then review them, score them and determine if interviews are necessary for an award.
 - j. Following the scoring and/or evaluation procedures outlined in the specifications, the Negotiation Committee may negotiate for the lowest possible cost based upon the agreed upon scope of services and then complete the Cost Price Analysis (CPA) form. All fees must be in compliance with the guidance provided in 2 CFR 200 or the CFR for that particular purchase.
 - jj. Department will tell the complete story of the proposal response and award in the CPA and other documentation which results in an award recommendation being made.
 - jjj. Any or all proposals may be rejected if there is a sound documented reason.
 - k. Award recommendation and CPA will be emailed to Procurement for award processing and Contract execution.
 - l. Procurement will review the System for Award Management, SAM.gov to ensure that the vendor is not excluded for procurement using Federal funding.
 - ll. A copy of the SAM report will be placed in the Procurement file.
 - m. Department will develop a documentation folder for all Competitive Proposals for use by the Contract Administrator to meet performance reporting requirements and audit needs.
 - mm. Contract information will be entered into the Contract Management System.
 - n. Following the completion of the service, the department will notify Procurement of the completion date and provide feedback on the Vendor's performance.

*** At no time will the policy listed herein supersede the Federal Grant Procurement Requirements set by the Grantor. It is up to the Department to read and understand the requirements of their grant and to work with the Procurement Department to ensure compliance for all purchases.**

*** For a specific procurement, you must exclude from bidding or proposal submission any contractors who have been involved in development of the procurement. For example, you must not accept bids or proposals from contractors who have developed or drafted specifications, requirements, statements of work, and/or requests for proposals for the procurement.**

Noncompetitive Proposal Process (Sole Source)

1. The Noncompetitive Proposal process will be followed any time Federal Grant funds are used by University of Central Missouri Departments to purchase commodities or services through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - a. The item exclusive to a single source and 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 Federal awarding agency or pass-through entity expressly authorizes Noncompetitive Proposals in response to a written request from the non-Federal entity.
 - d. After solicitation of a number of sources, competition is determined inadequate.
2. Departments shall establish need for purchase, specifications and identify sources.
3. The department shall have a full understanding of what their specific CFR requirements are before proceeding with the Noncompetitive Proposal.
4. All Noncompetitive Proposals will be conducted under the following guidelines:
 - a. Department must notify the Procurement department to discuss the use of this option and ensure that this is the proper way to proceed prior to completion and submission of any forms or documents.
 - b. A Sole Source form must be completed once the determination is made that a Noncompetitive Proposal is the method of procurement.
 - bb. All sections of the document must have a response listed and clearly define why this is a sole source.
 - c. Complete Independent Cost Estimate (ICE) and supporting documentation for product or service.
 - cc. ICE shall be completed by requesting an estimate or using historical data for similar or same product or services.
Note: The ICE should be completed from an independent source prior to getting a proposal from the selected Vendor if possible.
 - d. 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.
 - e. Award recommendation and CPA will be emailed to Procurement for award processing and Contract execution.
 - f. Procurement will review the System for Award Management, SAM.gov to ensure that the vendor is not excluded for procurement using Federal funding.
 - ff. A copy of the SAM report will be placed in the Procurement file.
 - g. Department will develop a documentation folder for all Competitive Proposals for use by the Contract Administrator to meet performance reporting requirements and audit needs.
 - h. Following the completion of the order, the department will notify Procurement of the completion date and provide feedback on the Vendor's performance.

* At no time will the policy listed herein supersede the Federal Grant Procurement Requirements set by the Grantor. It is up to the Department to read and understand the requirements of their grant and to work with the Procurement Department to ensure compliance for all purchases.

* Do not test equipment for a period of time and then determine that a sole source designation is required due to your testing. Testing equipment may be done following a competitive procurement process. This allows for fair and open competition.

* For a specific procurement, you must exclude from bidding or proposal submission any contractors who have been involved in development of the procurement. For example, you must not accept bids or proposals from contractors who have developed or drafted specifications, requirements, statements of work, and/or requests for proposals for the procurement.

* 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.

GENERAL FEDERAL GRANT PROCUREMENT INFORMATION

The following general information is being provided to all departments who are utilizing Federal Grant money to purchase commodities or services as a Grantee or Subgrantee effective July 1, 2023:

- 1) Read and understand all of the requirements of the grant that is being used including the CFR which provides guidance on the procurement process.
- 2) Determine whether your department and/or entity is a Grantee, Sub Grantee, Recipient or Sub Recipient according to Federal Guidelines (200.330).
- 3) Ensure accounting, Procurement and grant program personnel are provided adequate training and resources regarding administrative requirements.
- 4) All departments must inform their employees of the written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection of awards and administration of contracts.
- 5) Determine the need for the product or service, and where appropriate, analysis should be done to determine the most economical approach (lease vs. purchase, for example).
- 6) Determine if a cooperative bid is feasible with another government entity to increase the amount of product or services being ordered to obtain the best pricing for common or shared goods and services.
- 7) Piggyback purchases are only allowed if the Lead Public Agency allows options on their contract, the options are available at the time of request, and all Federal requirements have been met during the procurement process. Contact Procurement for additional information about piggybacking opportunities.
- 8) Determine if Federal excess and surplus property is available in lieu of Procurement new equipment.
- 9) Conduct an Independent Cost Estimate to determine what the purpose of the procurement is and the estimated cost of the project.
- 10) Follow the guidelines listed in the previous sections of this document for the type of procurement to be initiated.
- 11) Submit Intake Form, Independent Cost Estimate (ICE) and technical specifications to the Procurement Department for all purchases over \$10,000.00.
- 12) Refer to Procurement of Recovered Materials information listed below for all purchases over \$10,000.00.
- 13) Procurement will complete the specifications with front-end terms and conditions and either issue a quote on the Ebid system or notify the newspaper for advertisement and subsequent posting of the bid or RFP on the ebid system.
- 14) Construction projects require performance and payment bonds over \$15,000.00 or less in some cases.
- 15) All procurement transactions must be conducted in a manner providing full and open competition.
- 16) Procurement will issue the bid with all appropriate documentation as required in section 200.326 or the CFR for the grant being utilized.
- 17) Bids and Quotes will close automatically by the Ebid system and results posted immediately on the Ebid system.
- 18) Procurement will send notice to the departments on the closing of the bid and instructions on how to review the bid documents.
- 19) Notice and documentation for RFP's will be sent to the Selection Committee.
- 20) The department will issue an award recommendation to Procurement via email for the lowest, responsible, responsive Bidder for ITB's.
- 21) The Selection Committee and Negotiation Committee will issue an award recommendation to Procurement via email for the selected company for RFP's.

- 22) In addition to the email award notification the Department must provide a Cost/Price Analysis for all procurements exceeding the Small Purchase Threshold (\$25,000.00) (See section below for Cost/Price Analysis information)
- 23) Awards and contracts must be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the procurement.
- 24) Procurement will issue a Purchase Order or Contract as specified in the bid documents, have it executed by the Vendor, and complete execution by the appropriate entities.
 - a. Following execution, the documents will be filed with the appropriate clerk office and an email copy sent to the Vendor and the requesting department.
 - b. Purchase Orders will be issued from requisitions issued by the department.
- 25) Contracts with specific completion dates will be posted and monitored in the Ionwave Contract Management System by the Procurement Department.
- 26) Departments and Procurement must maintain records sufficient to detail the history of procurement, including but not limited to, rationale for method of procurement, selection of contract type, contractor selection or rejection, and basis for the contract price.
- 27) Time and material type contracts can only be used 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.
- 28) All departments must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts.
- 29) All contracts awarded using Federal funds must be officially closed out by contacting the Procurement Department.
- 30) The Contract Administrator is a designated person in the department who is responsible for ensuring that all contract requirements are met including but not limited to, timely delivery, correct quantities, products meeting specifications and charges being consistent with the Contract or PO.
- 31) A Construction project must have a Contract Administrator in the department initiating the request and a Construction Administrator. A Construction Administrator can be the same person as the Contract Administrator or another person who is charged with managing the construction project and notifying the Contract Administrator of changes in scope, delays, or other contract issues which result in a contract change order or contract amendment.
- 32) The procurement processes listed in this document are designed to allow for open competition. Do not test products from one or more Vendors prior to issuing a bid or RFP for that type of product.
- 33) The use of Brand Names in procurements is prohibited unless followed by the words, "Or Equivalent". If Brand Name Or Equivalent is used in a procurement, it shall be followed by the salient characteristics of the product listed.
- 34) Emergency declarations may result in the suspension of some, or all of the requirements listed herein. Contact the Procurement Director to determine what procurement requirements remain in effect during any type of emergency declaration.

OTHER FEDERAL GRANT PROCUREMENT INSTRUCTIONS

Use of GSA Contracts

Certain non-Federal entities are allowed to utilize GSA contracts for certain types of purchases. In the event a department is eligible to utilize these contracts, the Procurement Department will review the GSA Schedule for purchases of services, equipment, and supplies to determine if the GSA schedule may be of lower cost or better value than if an alternate procurement function was utilized.

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

- (a) The Non-Federal entity must take all necessary affirmative steps to assure that minority business, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

200.322 Procurement of recovered materials. (Includes requirements as shown in 40 CFR Part 247)

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.

247.1 Purpose and scope.

- (a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6962, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of this part.
- (b) This guideline designates items that are or can be made with recovered materials and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA. EPA's recommended practices with respect to the procurement of specific designated items are found in the companion Recovered Materials Advisory Notice(s).
- (c) EPA believes that adherence to the recommendations in the Recovered Materials Advisory Notice(s) constitutes compliance with RCRA section 6002. However, procuring agencies may adopt other types of procurement programs consistent with RCRA section 6002.

247.2 Applicability.

(1) This guideline applies to all procuring agencies and to all procurement actions involving items designated by EPA in this part, where the procuring agency purchases \$10,000 or more worth of one of these items during the course of a fiscal year, or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more.

(2) This guideline applies to Federal agencies, to State and local agencies using appropriated Federal funds to procure designated items, and to persons contracting with any such agencies with respect to work performed under such contracts. Federal procuring agencies should note that the requirements of RCRA section 6002 apply to them whether or not appropriated Federal funds are used for procurement of designated items.

(3) The \$10,000 threshold applies to procuring agencies as a whole rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.

(4) The term *procurement actions* include:

(5) Purchases made directly by a procuring agency and purchases made directly by any person (e.g., a contractor) in support of work being performed for a procuring agency, and

(6) Any purchases of designated items made "indirectly" by a procuring agency, as in the case of procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.

(7) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds disbursement to, a procuring agency.

(8) This guideline also does not apply to purchases made by private party recipients (e.g., individuals, non-profit organizations) of Federal funds pursuant to grants, loans, cooperative agreements, and other funds disbursements.

(9) RCRA section 6002(c)(1) requires procuring agencies to procure designated items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. Procuring agencies may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

247.3 Definitions – Refer to 40 CFR 247.3 for this information**247.4 Contracting officer requirements.**

Within one year after the effective date of each item designation, contracting officers shall require that vendors:

(a) Certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements, and

(b) Estimate the percentage of total material utilized for the performance of the contract which is recovered materials.

§ 247.5 Specifications.

(a) RCRA section 6002(d)(1) required Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies to revise their specifications by May 8, 1986, to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials.

(b) RCRA section 6002(d)(2) requires that within one year after the publication date of each item designation by the EPA, each procuring agency must assure that its specifications for these items require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of these items.

247.6 Affirmative procurement programs.

RCRA section 6002(i) provides that each procuring agency which purchases items designated by EPA must establish an affirmative procurement program, containing the four elements listed below, for procuring such items containing recovered materials to the maximum extent practicable:

(a) Preference program for Procurement of the designated items;

(b) Promotion program;

(c) Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and

(d) Annual review and monitoring of the effectiveness of the program.

247.7 Effective date.

Within one year after the date of publication of any item designation, procuring agencies which purchase that designated item must comply with the following requirements of RCRA: affirmative procurement of the designated item (6002(c)(1) and (i)), specifications revision (6002(d)(2)), vendor certification and estimation of recovered materials content of the item (6002(c)(3) and (i)(2)(C)), and verification of vendor estimates and certifications (6002(i)(2)(C)).

Refer to the following Item Designations (40 CFR 247) for a complete list of products/services which fall under these guidelines:

- § 247.10 — Paper and paper products.
- § 247.11 — Vehicular products.
- § 247.12 — Construction products.
- § 247.13 — Transportation products.
- § 247.14 — Park and recreation products.
- § 247.15 — Landscaping products.
- § 247.16 — Non-paper office products.
- § 247.17 — Miscellaneous products.

200.323 Contract cost and price Information

- (a) The Non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$25,000.00) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The Non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E— Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Reasonable costs

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally funded. In determining reasonableness of a given cost, consideration must be given to:

- (a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- (b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state and other laws and regulations; and terms and conditions of the Federal award.
- (c) Market prices for comparable goods or services for the geographic area.
- (d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal government.
- (e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

200.324 Federal awarding agency or pass-through entity review

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The Non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
- (1) The Non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The Non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, or other applicable clauses as required.

200.318 General Procurement Standards

(c)(1) 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. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

200.328 Monitoring and reporting program performance.

- (a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through *entities*.
- (b) *Non-construction performance reports.* The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
- (1) The Non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.
- (2) The Non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
- (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
- (ii) The reasons why established goals were not met, if appropriate.
- (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
- (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
- (e) The Federal awarding agency may make site visits as warranted by program needs.
- (f) The Federal awarding agency may waive any performance report required by this part if not needed.

200.329 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

200.330 Subrecipient and Contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

- (a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
- (1) Determines who is eligible to receive what Federal assistance;
 - (2) Has its performance measured in relation to whether objectives of a Federal program were met;
 - (3) Has responsibility for programmatic decision making;
 - (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
 - (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.
- (b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:
- (1) Provides the goods and services within normal business operations;
 - (2) Provides similar goods or services to many different purchasers;
 - (3) Normally operates in a competitive environment;
 - (4) provides goods or services that are ancillary to the operation of the Federal program; and
 - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
- (c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

CONFLICT OF INTEREST STATEMENT

See all information regarding UCM Conflict of Interest Date at the following site:

<https://www.ucmo.edu/offices/general-counsel/university-policy-library/policies/conflict-of-interest-and-commitment-policy-employees-and-board-of-governors/>

This policy combines the previous "Conflict of Interest Policy for Members of the Board of Governors," 1.1.040, approved on September 25, 1996, and "Conflict of Interest or Commitment Policy for Employees," 2.1.050, approved on April 19, 1989; revised and approved April 28, 2017

HR

Procedure

Policy

University of Central Missouri Policy

Policy Name: Conflict of Interest and Commitment Policy - Employees and Board of Governors	Date Approved: This policy combines the previous "Conflict of Interest Policy for Members of the Board of Governors," 1.1.040, approved on September 25, 1996, and "Conflict of Interest or Commitment Policy for Employees," 2.1.050, approved on April 19, 1989; revised and approved April 28, 2017
Policy Category: Board of Governors - University Operation	Date Effective: April 28, 2017
Policy Number: 1.2.200	Date Last Revised: April 28, 2017
Approval Authority: UCM Board of Governors	Review Cycle: 4 years
Responsible Department: Office of Human Resources	

Purpose/Policy Statement

The purpose of this policy is to define conditions constituting a conflict of interest or commitment and interpret that definition as it applies to University of Central Missouri employees and members of the Board of Governors.

I. Prohibited Activity

II. Prohibitions for employees in executive or administrative capacities

III. Conflict of commitment for employees (excluding members of Board of Governors)

University employees, excluding members of the Board of Governors, are expected to devote their primary professional loyalty, time and energy to their university responsibilities. Accordingly, outside professional activities of such employees must be arranged so as not to interfere with the primacy of university responsibilities.

Such employees may devote a reasonable amount of time to outside activities provided it will not interfere with their responsibilities to the university. Staff will be required to use available leave time when conducting outside activities during university work hours. Faculty members' outside activities shall not exceed 25 percent of their full-time workload.

Employees, excluding members of the Board of Governors, shall obtain prior approval from the appropriate senior administrator or designee when committing university resources, including employee time commitments, beyond the level that is typically available to said employees for outside activities. During those times that they are under contract or have appointment with the university, full-time employees shall obtain written consent of the appropriate senior administrator or designee prior to accepting outside compensated teaching responsibilities; such consent must be obtained prior to each occurrence.

⌵ IV. Annual review and disclosure (member of Board of Governors only)

Each year annually, each member of the Board of Governors must:

- Review this policy
 - Review referenced statutes
 - Disclose any possible personal, familial or business relationships that reasonably could give rise to a conflict, or appearance of a conflict, involving the university
 - Acknowledge by his or her signature that he or she is in accordance with the letter and spirit of this policy
-

⬆️ Scope and Definitions

⌵ Benefits to and relationships with.

This policy refers to certain (1) benefits (including financial gain, enrichment, payments, gifts, consideration, etc.) to employees and members of the Board of Governors and (2) relationships with employees or members of the Board of Governors. For purposes of this policy, such references also extend to benefits to and relationships with an employee's or member's spouse or domestic partner or dependent child.

For example,

- where the policy prohibits an employee from acting by reason of any payment to the employee, employees are also prohibited from acting by reason of any payment to the employee's dependent child;
- where the policy prohibits an employee from using confidential information obtained in the course of employment for the financial gain of a business with which the employee has a relationship, employees are also prohibited from using confidential information obtained in the

course of employment for the financial gain of a business with which the employee's spouse or domestic partner has a relationship.

⊙ Business relationships.

Business relationships include relationships with corporations, associations, firms, partnerships, proprietorship, or business entity of any kind of which an employee is

- a sole proprietor;
- a director, officer, or owner (alone or in combination with the employee's spouse or domestic partner or dependent child) of more than 10% of any class of stock or partnership units, other than as a limited partner of a limited partnership; or
- a trustee or settlor of a trust in which the employee (alone or in combination with the employee's spouse or domestic partner or dependent child) is a beneficiary or holder of a reversionary interest of 10% or more of the corpus of the trust.

See § 105.450, RSMo.

⊙ Conflict of commitment.

Any professional activity that interferes with an employee's ability to adequately perform the employee's university duties at the expected level of job performance.

⊙ Conflict of interest.

Any situation in which an employee's judgment or conduct in the performance of their official duties for the university could be influenced, or would give the appearance of being influenced, by the employee's familial, personal or business relationship with a third party, or any situation that would be deemed a conflict of interest under the laws of the United States or the laws of the State of Missouri, including RSMo §§ 174.220, 105.450 et. seq., Mo. Const. Art. VII,

Section 6. Employees with conflicts of interests must recuse themselves from acting as required by law.

⊖ **Dependent child.**

Children, stepchildren, foster children, and wards under the age of eighteen, residing in the employee's household and who receive in excess of fifty percent of their support from the employee.

⊖ **Employee.**

For purposes of this policy, "employee" includes persons presently or formerly acting on behalf of the university, with or without compensation, including: officers, agents, individual governors, persons employed by the university, and volunteers when their work is accepted, contracted for, or consented by the university and who are under the direction and control of the university.

"Employee" does not include an independent contractor.

⊖ **Employees in executive and administrative capacities.**

Employees in positions including responsibilities for material decision-making in any segment of university operations, management, or oversight of business, including board membership.

⊖ **Outside activity.**

Consulting or other non-university activities, including but not limited to:

- Activities that involve the use of the employee's expertise, the practice of the employee's profession, or contribution to the employee's professional competence or development; and
 - Activities relating to a direct or indirect financial interest in an entity that proposes to do business or is doing business with the university, or that is conducting research or business that is relevant to the scope of the employee's university responsibilities.
-

⌵ Senior Administrator.

Employees holding the position of president, provost, senior vice president, vice president, or vice provost.

⬆ Procedure

⌵ I. Procedures for employees (excluding members of the Board of Governors)

⌵ II. Procedures for members of the Board of Governors

This content is from the eCFR and is authoritative but unofficial.

Title 2 — Grants and Agreements

Subtitle A — Office of Management and Budget Guidance for Grants and Agreements

Chapter II — Office of Management and Budget Guidance

Part 200 — Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

Subpart D — Post Federal Award Requirements

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

Authority: 31 U.S.C. 503

Source: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

Procurement Standards

- § 200.317 Procurements by states.
- § 200.318 General procurement standards.
- § 200.319 Competition.
- § 200.320 Methods of procurement to be followed.
- § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- § 200.322 Domestic preferences for procurements.
- § 200.323 Procurement of recovered materials.
- § 200.324 Contract cost and price.
- § 200.325 Federal awarding agency or pass-through entity review.
- § 200.326 Bonding requirements.
- § 200.327 Contract provisions.

PROCUREMENT STANDARDS

§ 200.317 Procurements by states.

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

§ 200.318 General procurement standards.

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

- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
 - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
 - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
 - (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - (i) The actual cost of materials; and
 - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
 - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

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

§ 200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
 - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;

- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

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

- (a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
- (1) **Micro-purchases** —

- (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
 - (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
 - (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
 - (iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
 - (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
 - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
 - (C) For public institutions, a higher threshold consistent with State law.
 - (v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.
- (2) **Small purchases –**
- (i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

- (ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.
- (b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:
- (1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.
 - (i) In order for sealed bidding to be feasible, the following conditions should be present:
 - (A) A complete, adequate, and realistic specification or purchase description is available;
 - (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
 - (ii) If sealed bids are used, the following requirements apply:
 - (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (E) Any or all bids may be rejected if there is a sound documented reason.
 - (2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
 - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
 - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.
- (c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
 - (2) The item is available only from a single source;
 - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
 - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
 - (5) After solicitation of a number of sources, competition is determined inadequate.

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

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§ 200.323 Procurement of recovered materials.

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

§ 200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

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

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
 - (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
 - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

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

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.327 Contract provisions.

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

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Title 48 – Federal Acquisition Regulations System

Chapter 1 – Federal Acquisition Regulation

Subchapter A – General

Part 2 – Definitions of Words and Terms

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

Source: 48 FR 42107, Sept. 19, 1983, unless otherwise noted.

Subpart 2.1 Definitions

2.101 Definitions.

Subpart 2.1—Definitions

2.101 Definitions.

- (a) A word or a term, defined in this section, has the same meaning throughout this regulation (48 CFR chapter 1), unless—
- (1) The context in which the word or term is used clearly requires a different meaning; or
 - (2) Another FAR part, subpart, or section provides a different definition for the particular part or portion of the part.
- (b) If a word or term that is defined in this section is defined differently in another part, subpart, or section of this regulation (48 CFR chapter 1), the definition in—
- (1) This section includes a cross-reference to the other definitions; and
 - (2) That part, subpart, or section applies to the word or term when used in that part, subpart, or section.

Acquisition means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Acquisition planning means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

Activity Address Code (AAC) means a distinct six-position code consisting of a combination of alpha and/or numeric characters assigned to identify specific agency offices, units, activities, or organizations by the General Services Administration for civilian agencies and by the Department of Defense for defense agencies.

Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Advisory and assistance services means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

- (1) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.
- (2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.
- (3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505-1(b)) to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A-109 or to provide direct support of a weapon system that is essential to research, development, production, operation or maintenance of the system.

Affiliates means associated business concerns or individuals if, directly or indirectly either one controls or can control the other; or third party controls or can control both, except as follows:

- (1) For use in subpart 9.4, see the definition at 9.403.
- (2) For use of affiliates in size determinations, see the definition of "small business concern" in this section.

Agency head or head of the agency means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency.

Alternate means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It adds wording to, deletes wording from, or substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

Architect-engineer services, as defined in 40 U.S.C. 1102, means—

- (1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;

- (2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Assignment of claims means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the Government for contract performance.

Assisted acquisition means a type of interagency acquisition where a servicing agency performs acquisition activities on a requesting agency's behalf, such as awarding and administering a contract, task order, or delivery order.

Basic research means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

Best value means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

Bid sample means a product sample required to be submitted by an offeror to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the solicitation (e.g., balance, facility of use, or pattern).

Biobased product means a product determined by the U.S. Department of Agriculture to be a commercial product or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials.

Broad agency announcement means a general announcement of an agency's research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government's needs (see 6.102(d)(2)).

Building or work means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not "building" or "work" within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

Bundling —

- (1) Means a subset of consolidation that combines two or more requirements for supplies or services, previously provided or performed under separate smaller contracts (see paragraph (2) of this definition), into a solicitation for a single contract, a multiple-award contract, or a task or delivery order that is likely to be unsuitable for award to a small business concern (even if it is suitable for award to a small business with a Small Business Teaming Arrangement) due to—
 - (i) The diversity, size, or specialized nature of the elements of the performance specified;
 - (ii) The aggregate dollar value of the anticipated award;
 - (iii) The geographical dispersion of the contract performance sites; or
 - (iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.
- (2) "Separate smaller contract" as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

Business unit means any segment of an organization, or an entire business organization that is not divided into segments.

Certified cost or pricing data means "cost or pricing data" that were required to be submitted in accordance with FAR 15.403-4 and 15.403-5 and have been certified, or are required to be certified, in accordance with 15.406-2. This certification states that, to the best of the person's knowledge and belief, the cost or pricing data are accurate, complete, and current as of a date certain before contract award. Cost or pricing data are required to be certified in certain procurements (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).

Change-of-name agreement means a legal instrument executed by the contractor and the Government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

Change order means a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor's consent.

Chief Acquisition Officer means an executive level acquisition official responsible for agency performance of acquisition activities and acquisition programs created pursuant to 41 U.S.C. 1702.

Chief of mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96-465) to be temporarily in charge of such a mission or office.

Claim means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71, Contract Disputes, until certified as required by the statute. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

Classified acquisition means an acquisition in which offerors must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

Classified contract means any contract in which the contractor or its employees must have access to classified information during contract performance. A contract may be a classified contract even though the contract document itself is unclassified.

Classified information means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)

- (i) Is owned by, is produced by or for, or is under the control of the United States Government; or
- (ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

Cognizant Federal agency means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

Combatant commander means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

Commercial and Government Entity (CAGE) code means—

- (1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or
- (2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

Commercial component means any component that is a commercial product.

Commercial computer software means any computer software that is a commercial product or commercial service.

Commercial product means—

- (1) A product, other than real property, that is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes, and—
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;

- (2) A product that evolved from a product described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
- (3) A product that would satisfy a criterion expressed in paragraph (1) or (2) of this definition, except for—
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor modifications" means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of products meeting the requirements of paragraph (1), (2), or (3) of this definition that are of a type customarily combined and sold in combination to the general public;
- (5) A product, or combination of products, referred to in paragraphs (1) through (4) of this definition, even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or
- (6) A nondevelopmental item, if the procuring agency determines the product was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.

Commercial service means—

- (1) Installation services, maintenance services, repair services, training services, and other services if—
 - (i) Such services are procured for support of a commercial product as defined in this section, regardless of whether such services are provided by the same source or at the same time as the commercial product; and
 - (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
- (2) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—
 - (i) **Catalog price** means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (ii) **Market prices** means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors; or

- (3) A service referred to in paragraph (1) or (2) of this definition, even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

Commercially available off-the-shelf (COTS) item—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial product (as defined in paragraph (1) of the definition of "commercial product" in this section);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Common item means material that is common to the applicable Government contract and the contractor's other work, except that for use in the clause at 52.246–26, see the definition in paragraph (a) of that clause.

Component means any item supplied to the Government as part of an end item or of another component, except that for use in—

- (1) Part 25, see the definition in 25.003;
- (2) 52.225–1 and 52.225–3, see the definition in 52.225–1(a) and 52.225–3(a);
- (3) 52.225–9 and 52.225–11, see the definition in 52.225–9(a) and 52.225–11(a); and
- (4) 52.225–21 and 52.225–23, see the definition in 52.225–21(a) and 52.225–23(a).

Computer database or *database* means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software —

- (1) Means—
 - (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and
 - (ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.
- (2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Consent to subcontract means the contracting officer's written consent for the prime contractor to enter into a particular subcontract.

Consolidation or consolidated requirement —

- (1) Means a solicitation for a single contract, a multiple-award contract, a task order, or a delivery order to satisfy—
 - (i) Two or more requirements of the Federal agency for supplies or services that have been provided to or performed for the Federal agency under two or more separate contracts, each of which was lower in cost than the total cost of the contract for which offers are solicited; or
 - (ii) Requirements of the Federal agency for construction projects to be performed at two or more discrete sites.
- (2) **Separate contract** as used in this definition, means a contract that has been performed by any business, including small and other than small business concerns.

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property (except that for use in subpart 22.5, see the definition at 22.502).

Contiguous United States (CONUS) means the 48 contiguous States and the District of Columbia.

Contingency operation (10 U.S.C. 101(a)(13)) means a military operation that—

- (1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
- (2) Results in the call or order to, or retention on, active duty of members of the uniformed services under sections 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of title 10 of the United States Code, Chapter 13 of title 10 of the United States Code, and section 3713 of title 14 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Continued portion of the contract means the portion of a contract that the contractor must continue to perform following a partial termination.

Contract means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see part 16.

Contract administration office means an office that performs—

- (1) Assigned postaward functions related to the administration of contracts; and
- (2) Assigned preaward functions.

Contract clause or clause means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

Contract modification means any written change in the terms of a contract (see 43.103).

Contracting means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

Contracting activity means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

Contracting office means an office that awards or executes a contract for supplies or services and performs postaward functions not assigned to a contract administration office (except for use in part 48, see also 48.001).

Contracting officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. "Administrative contracting officer (ACO)" refers to a contracting officer who is administering contracts. "Termination contracting officer (TCO)" refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation (48 CFR chapter 1) to administrative contracting officer or termination contracting officer does not—

- (1) Require that a duty be performed at a particular office or activity; or
- (2) Restrict in any way a contracting officer in the performance of any duty properly assigned.

Contracting officer's representative (COR) means an individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*. For use in subpart 23.5, see the definition at 23.503.

Cost or pricing data (10 U.S.C. 3701(1) and 41 U.S.C. chapter 35) means all facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include, but are not limited to, such factors as—

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;

- (4) Data supporting projections of business prospects and objectives and related operations costs;
- (5) Unit-cost trends such as those associated with labor efficiency;
- (6) Make-or-buy decisions;
- (7) Estimated resources to attain business goals; and
- (8) Information on management decisions that could have a significant bearing on costs.

Cost realism means that the costs in an offeror's proposal—

- (1) Are realistic for the work to be performed;
- (2) Reflect a clear understanding of the requirements; and
- (3) Are consistent with the various elements of the offeror's technical proposal.

Cost sharing means an explicit arrangement under which the contractor bears some of the burden of reasonable, allocable, and allowable contract cost.

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

Data other than certified cost or pricing data means pricing data, cost data, and judgmental information necessary for the contracting officer to determine a fair and reasonable price or to determine cost realism. Such data may include the identical types of data as certified cost or pricing data, consistent with Table 15–2 of 15.408, but without the certification. The data may also include, for example, sales data and any information reasonably required to explain the offeror's estimating process, including, but not limited to—

- (1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
- (2) The nature and amount of any contingencies included in the proposed price.

Day means, unless otherwise specified, a calendar day.

Debarment means action taken by a debarring official under 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is "debarred."

Delivery order means an order for supplies placed against an established contract or with Government sources.

Depreciation means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

Descriptive literature means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

- Design-to-cost* means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.
- Designated operational area* means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.
- Direct acquisition* means a type of interagency acquisition where a requesting agency places an order directly against a servicing agency's indefinite-delivery contract. The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order.
- Direct cost* means any cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.
- Disaster Response Registry* means a voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities established in accordance with 6 U.S.C. 796, Registry of Disaster Response Contractors. The Registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas. The Registry is accessed via the Internet at <https://www.sam.gov>, Search Records, Advanced Search, Disaster Response Registry Search. (See 26.205.)
- Drug-free workplace* means the site(s) for the performance of work done by the contractor in connection with a specific contract where employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
- Earned value management system* means a project management tool that effectively integrates the project scope of work with cost, schedule and performance elements for optimum project planning and control. The qualities and operating characteristics of an earned value management system are described in Electronic Industries Alliance Standard 748 (EIA-748), Earned Value Management Systems. (See OMB Circular A-11, Part 7.)
- Economically disadvantaged women-owned small business (EDWOSB) concern* —(see definition of *Women-Owned Small Business (WOSB) Program* in this section).
- Effective date of termination* means the date on which the notice of termination requires the contractor to stop performance under the contract. If the contractor receives the termination notice after the date fixed for termination, then the effective date of termination means the date the contractor receives the notice.
- Electronic commerce* means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.
- Electronic data interchange (EDI)* means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.
- Electronic Funds Transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and

transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. 3332 and implementing regulations at 31 CFR part 208, the term "electronic funds transfer" includes a Governmentwide commercial purchase card transaction.

Electronic Funds Transfer (EFT) indicator means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

Emergency, as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203, and subpart 26.2, means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States (42 U.S.C. 5122).

End product means supplies delivered under a line item of a Government contract, except for use in part 25 and the associated clauses at 52.225-1, 52.225-3, and 52.225-5, see the definitions in 25.003, 52.225-1(a), 52.225-3(a), and 52.225-5(a).

Energy-efficient product –

- (1) Means a product that—
 - (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
 - (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.
- (2) As used in this definition, the term "product" does not include any energy-consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b).

Energy-efficient standby power devices means products that use—

- (1) External standby power devices, or that contain an internal standby power function; and
- (2) No more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

Energy-savings performance contract means a contract that requires the contractor to—

- (1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations;
- (2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and
- (3) Guarantee future energy and cost savings to the Government.

Environmentally preferable means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Excess personal property means any personal property under the control of a Federal agency that the agency head determines is not required for its needs or for the discharge of its responsibilities.

Executive agency means an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

Facilities capital cost of money means "cost of money as an element of the cost of facilities capital" as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

Federal agency means any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).

Federally-controlled facilities means—

- (1) Federally-owned buildings or leased space, whether for single or multi-tenant occupancy, and its grounds and approaches, all or any portion of which is under the jurisdiction, custody or control of a department or agency;
- (2) Federally-controlled commercial space shared with non-government tenants. For example, if a department or agency leased the 10th floor of a commercial building, the Directive applies to the 10th floor only;
- (3) Government-owned, contractor-operated facilities, including laboratories engaged in national defense research and production activities; and
- (4) Facilities under a management and operating contract, such as for the operation, maintenance, or support of a Government-owned or Government-controlled research, development, special production, or testing establishment.

Federally-controlled information system means an information system (44 U.S.C. 3502(8)) used or operated by a Federal agency, or a contractor or other organization on behalf of the agency (44 U.S.C. 3544(a)(1)(A)).

Federally Funded Research and Development Centers (FFRDC's) means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and—

- (1) A long-term relationship is contemplated;
- (2) Most or all of the facilities are owned or funded by the Government; and
- (3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship.

Final indirect cost rate means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor's fiscal year (unless the parties decide upon a different period) to which it applies. For cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

First article means a preproduction model, initial production sample, test sample, first lot, pilot lot, or pilot models.

First article testing means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

F.o.b. means free on board. This term is used in conjunction with a physical point to determine—

- (1) The responsibility and basis for payment of freight charges; and
- (2) Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

F.o.b. destination means free on board at destination; *i.e.*, the seller or consignor delivers the goods on seller's or consignor's conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss. For use in the clause at 52.247–34, see the definition at 52.247–34(a).

F.o.b. origin means free on board at origin; *i.e.*, the seller or consignor places the goods on the conveyance. Unless the contract provides otherwise, the buyer or consignee is responsible for the cost of shipping and risk of loss. For use in the clause at 52.247–29, see the definition at 52.247–29(a).

F.o.b. . . . (For other types of *F.o.b.*, see 47.303).

Forward pricing rate agreement means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. These rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

Forward pricing rate recommendation means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

Freight means supplies, goods, and transportable property.

Full and open competition, when used with respect to a contract action, means that all responsible sources are permitted to compete.

General and administrative (G&A) expense means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

Global warming potential means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

Governmentwide acquisition contract (GWAC) means a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—

- (1) By an executive agent designated by the Office of Management and Budget pursuant to 40 U.S.C. 11302(e); or
- (2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by former section 40 U.S.C. 759, repealed by Pub. L. 104–106. The Economy Act does not apply to orders under a Governmentwide acquisition contract.

Governmentwide point of entry (GPE) means the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at <https://www.sam.gov>.

Head of the agency (see "agency head").

Head of the contracting activity means the official who has overall responsibility for managing the contracting activity.

High global warming potential hydrofluorocarbons means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at <http://www.epa.gov/snap/>.

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

HUBZone means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, lands within the external boundaries of an Indian reservation, qualified base closure areas, redesignated areas, governor-designated covered areas, or qualified disaster areas, as defined in 13 CFR 126.103.

HUBZone contract means a contract awarded to a Small Business Administration certified "HUBZone small business concern" through any of the following procurement methods:

- (1) A sole-source award to a HUBZone small business concern.
- (2) Set-aside awards based on competition restricted to HUBZone small business concerns.
- (3) Awards to HUBZone small business concerns through full and open competition after a price evaluation preference in favor of HUBZone small business concerns.
- (4) Awards based on a reserve for HUBZone small business concerns in a solicitation for a multiple-award contract.

HUBZone small business concern means a small business concern that meets the requirements described in 13 CFR 126.200, is certified by the Small Business Administration (SBA) and designated by SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) (13 CFR 126.103). SBA's designation also appears in SAM.

Humanitarian or peacekeeping operation means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing (10 U.S.C. 3015(2) and 41 U.S.C. 153(2)).

Hydrofluorocarbons means compounds that contain only hydrogen, fluorine, and carbon.

In writing, writing, or written means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

Indirect cost rate means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period (see also "final indirect cost rate").

Ineligible means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation (48 CFR chapter 1) and its implementing and supplementing regulations; for example, pursuant to—

- (1) 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), and its related statutes and implementing regulations;
- (2) 41 U.S.C. chapter 67, Service Contract Labor Standards;
- (3) The Equal Employment Opportunity Acts and Executive orders;
- (4) 41 U.S.C. chapter 65, Contracts for Material, Supplies, Articles, and Equipment Exceeding \$10,000;
- (5) 41 U.S.C. chapter 83, Buy American; or
- (6) The Environmental Protection Acts and Executive orders.

Information and communication technology (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include but are not limited to the following: Computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; websites; videos; and electronic documents.

Information security means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

- (1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;
- (2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and
- (3) Availability, which means ensuring timely and reliable access to, and use of, information.

Information technology means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

- (1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—
 - (i) Its use; or
 - (ii) To a significant extent, its use in the performance of a service or the furnishing of a product.
- (2) The term "information technology" includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.
- (3) The term "information technology" does not include any equipment that—
 - (i) Is acquired by a contractor incidental to a contract; or
 - (ii) Contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

Inherently governmental function means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

- (1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—
 - (i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
 - (ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
 - (iii) Significantly affect the life, liberty, or property of private persons;
 - (iv) Commission, appoint, direct, or control officers or employees of the United States; or
 - (v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.
- (2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail

operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services.

Inspection means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

Insurance means a contract that provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

Interagency acquisition means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency), by an assisted acquisition or a direct acquisition. The term includes—

- (1) Acquisitions under the Economy Act (31 U.S.C. 1535); and
- (2) Non-Economy Act acquisitions completed under other statutory authorities (e.g., General Services Administration Federal Supply Schedules in subpart 8.4 and Governmentwide acquisition contracts (GWACs)).

Invoice means a contractor's bill or written request for payment under the contract for supplies delivered or services performed (see also "proper invoice").

Irrevocable letter of credit means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon the Government's (the beneficiary) presentation of a written demand for payment. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit.

Labor surplus area means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Latent defect means a defect that exists at the time of acceptance but cannot be discovered by a reasonable inspection.

Line item means the basic structural element in a procurement instrument that describes and organizes the required product or service for pricing, delivery, inspection, acceptance, invoicing, and payment. The use of the term "line item" includes "subline item," as applicable.

Line item number means either a numeric or alphanumeric format to identify a line item.

Major disaster, as used in 6.208, 13.201, 13.500, 18.001, 18.202, 18.203, and subpart 26.2, means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby (42 U.S.C. 5122).

Major system means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

- (1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$185 million based on Fiscal Year 2014 constant dollars or the eventual total expenditure for the acquisition exceeds \$835 million based on Fiscal Year 2014 constant dollars (or any update of these thresholds based on a more recent fiscal year, as specified in the DoD Instruction 5000.02, "Operation of the Defense Acquisition System");
- (2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$ 2.5 million or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget Circular A-109, entitled "Major System Acquisitions," whichever is greater; or
- (3) The system is designated a "major system" by the head of the agency responsible for the system (10 U.S.C. 3041 and 41 U.S.C. 109).

Make-or-buy program means that part of a contractor's written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted.

Manufactured end product means any end product in product and service codes (PSC) 1000-9999, except—

- (1) PSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or service group (PSG) 87, Agricultural Supplies;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) PSC 9610, Ores;
- (9) PSC 9620, Minerals, Natural and Synthetic; and
- (10) PSC 9630, Additive Metal Materials.

Market research means collecting and analyzing information about capabilities within the market to satisfy agency needs.

Master solicitation means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

May denotes the permissive. However, the words "no person may. . ." mean that no person is required, authorized, or permitted to do the act described.

Micro-purchase means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.

Micro-purchase threshold means \$10,000, except it means—

- (1) For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), \$2,000;
- (2) For acquisitions of services subject to 41 U.S.C. chapter 67, Service Contract Labor Standards, \$2,500;
- (3) For acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122), as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) (41 U.S.C. 1903)—
 - (i) \$20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and
 - (ii) \$35,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States; and
- (4) For acquisitions of supplies or services from institutions of higher education (20 U.S.C. 1001(a)) or related or affiliated nonprofit entities, or from nonprofit research organizations or independent research institutes—
 - (i) \$10,000; or
 - (ii) A higher threshold, as determined appropriate by the head of the agency and consistent with clean audit findings under 31 U.S.C. chapter 75, Requirements for Single Audits; an internal institutional risk assessment; or State law.

Minority Institution means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act (20 U.S.C. 1101a).

Multi-agency contract (MAC) means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see 17.502–2). Multi-agency contracts include contracts for information technology established pursuant to 40 U.S.C. 11314(a)(2).

Multiple-award contract means a contract that is—

- (1) A Multiple Award Schedule contract issued by GSA (e.g., GSA Schedule Contract) or agencies granted Multiple Award Schedule contract authority by GSA (e.g., Department of Veterans Affairs) as described in FAR part 38;
- (2) A multiple-award task-order or delivery-order contract issued in accordance with FAR subpart 16.5, including Governmentwide acquisition contracts; or
- (3) Any other indefinite-delivery, indefinite-quantity contract entered into with two or more sources pursuant to the same solicitation.

Must (see "shall").

National defense means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space, except that for use in Subpart 11.6, see the definition in 11.601.

Neutral person means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person must have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

Nondevelopmental item means—

- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
- (2) Any item described in paragraph (1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
- (3) Any item of supply being produced that does not meet the requirements of paragraphs (1) or (2) solely because the item is not yet in use.

Novation agreement means a legal instrument—

- (1) Executed by the—
 - (i) Contractor (transferor);
 - (ii) Successor in interest (transferee); and
 - (iii) Government; and
- (2) By which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

Offer means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals"; however, responses to requests for quotations (simplified acquisition) are "quotations", not offers. For unsolicited proposals, see subpart 15.6.

Offeror means offeror or bidder.

Office of Small and Disadvantaged Business Utilization means the Office of Small Business Programs when referring to the Department of Defense.

OMB Uniform Guidance at 2 CFR part 200 is the abbreviated title for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200), which supersedes OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133, and the guidance in Circular A-50 on Audit Followup.

Option means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Outlying areas means—

- (1) ***Commonwealths.***
 - (i) Puerto Rico.
 - (ii) The Northern Mariana Islands;
- (2) ***Territories.***
 - (i) American Samoa.
 - (ii) Guam.
 - (iii) U.S. Virgin Islands; and
- (3) ***Minor outlying islands.***
 - (i) Baker Island.
 - (ii) Howland Island.
 - (iii) Jarvis Island.
 - (iv) Johnston Atoll.
 - (v) Kingman Reef.
 - (vi) Midway Islands.
 - (vii) Navassa Island.
 - (viii) Palmyra Atoll.
 - (ix) Wake Atoll.

Overtime means time worked by a contractor's employee in excess of the employee's normal workweek.

Overtime premium means the difference between the contractor's regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium, *i.e.*, the difference between the contractor's regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.

Ozone-depleting substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

- (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Partial termination means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

Past performance means an offeror's or contractor's performance on active and physically completed contracts (see 4.804-4).

Performance-based acquisition (PBA) means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed.

Performance Work Statement (PWS) means a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.

Personal property means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

Personal services contract means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see 37.104).

Plant clearance officer means an authorized representative of the contracting officer, appointed in accordance with agency procedures, responsible for screening, redistributing, and disposing of contractor inventory from a contractor's plant or work site. The term "Contractor's plant" includes, but is not limited to, Government-owned contractor-operated plants, Federal installations, and Federal and non-Federal industrial operations, as may be required under the scope of the contract.

Pollution prevention means any practice that—

- (1)
 - (i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
 - (ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;
- (2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or
- (3) Protects natural resources by conservation.

Power of attorney means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also "attorney-in-fact" at 28.001).

Preaward survey means an evaluation of a prospective contractor's capability to perform a proposed contract.

Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Pricing means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

Procurement (see "acquisition").

Procuring activity means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term "procuring activity" is synonymous with "contracting activity."

Products has the same meaning as *supplies*.

Projected average loss means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

Proper invoice means an invoice that meets the minimum standards specified in 32.905(b).

Purchase order, when issued by the Government, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

Qualification requirement means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

Qualified products list (QPL) means a list of products that have been examined, tested, and have satisfied all applicable qualification requirements.

Qualifying offeror, as used in 13.106-1 and 15.304, means an offeror that is determined to be a responsible source, submits a technically acceptable proposal that conforms to the requirements of the solicitation, and the contracting officer has no reason to believe would be likely to offer other than fair and reasonable pricing (10 U.S.C. 3206(c)(4)).

Receiving report means written evidence that indicates Government acceptance of supplies delivered or services performed (see subpart 46.6). Receiving reports must meet the requirements of 32.905(c).

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in subpart 11.3 for paper and paper products, see the definition at 11.301.

Registered in the System for Award Management (SAM) means that—

- (1) The Contractor has entered all mandatory information, including the unique entity identifier and the Electronic Funds Transfer indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into SAM;
- (2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in SAM;

- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- (4) The Government has marked the record "Active".

Renewable energy means energy produced by solar, wind, geothermal, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project (Energy Policy Act of 2005, 42 U.S.C. 15852).

Renewable energy technology means—

- (1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or
- (2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

Requesting agency means the agency that has the requirement for an interagency acquisition.

Residual value means the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

Responsible audit agency means the agency that is responsible for performing all required contract audit services at a business unit.

Responsible prospective contractor means a contractor that meets the standards in 9.104.

Scrap means personal property that has no value except its basic metallic, mineral, or organic content.

Segment means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes—

- (1) Government-owned contractor-operated (GOCO) facilities; and
- (2) Joint ventures and subsidiaries (domestic and foreign) in which the organization has—
 - (i) A majority ownership; or
 - (ii) Less than a majority ownership, but over which it exercises control.

Self-insurance means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

Senior procurement executive means the individual appointed pursuant to 41 U.S.C. 1702(c) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

Service-disabled veteran-owned small business concern —

- (1) Means a small business concern—

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Servicing agency means the agency that will conduct an assisted acquisition on behalf of the requesting agency.

Shall denotes the imperative.

Shipment means freight transported or to be transported.

Shop drawings means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

- (1) The proposed fabrication and assembly of structural elements.
- (2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment.

Should means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

Signature or *signed* means the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

Simplified acquisition procedures means the methods prescribed in part 13 for making purchases of supplies or services.

Simplified acquisition threshold means \$250,000, except for—

- (1) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation; to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; to support a request from the Secretary of State or the Administrator of the United States Agency for International Development to facilitate provision of international disaster assistance pursuant to 22 U.S.C. 2292 et seq.; or to support response to an emergency or major disaster (42 U.S.C. 5122), (41 U.S.C. 1903), the term means—
 - (i) \$800,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and
 - (ii) \$1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and
- (2) Acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 3015), the term means \$500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

Single, Governmentwide point of entry, means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

Small business concern –

- (1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102).
- (2) **Affiliates**, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

Small business subcontractor means a concern that does not exceed the size standard for the North American Industry Classification Systems code that the prime contractor determines best describes the product or service being acquired by the subcontract.

Small Business Teaming Arrangement –

- (1) Means an arrangement where—
 - (i) Two or more small business concerns have formed a joint venture; or
 - (ii) A small business offeror agrees with one or more other small business concerns to have them act as its subcontractors under a specified Government contract. A Small Business Teaming Arrangement between the offeror and its small business subcontractor(s) exists through a written agreement between the parties that—
 - (A) Is specifically referred to as a "Small Business Teaming Arrangement"; and
 - (B) Sets forth the different responsibilities, roles, and percentages (or other allocations) of work as it relates to the acquisition;
- (2)
 - (i) For civilian agencies, may include two business concerns in a mentor-protégé relationship when both the mentor and the protégé are small or the protégé is small and the concerns have received an exception to affiliation pursuant to 13 CFR 121.103(h)(3)(ii) or (iii).
 - (ii) For DoD, may include two business concerns in a mentor-protégé relationship in the Department of Defense Pilot Mentor-Protégé Program (see section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510; 10 U.S.C. 4901 note prec.) when both the mentor and the protégé are small. There is no exception to joint venture size affiliation for offers received from teaming arrangements under the Department of Defense Pilot Mentor-Protégé Program; and
- (3) See 13 CFR 121.103(b)(9) regarding the exception to affiliation for offers received from Small Business Teaming Arrangements in the case of a solicitation of offers for a bundled contract with a reserve.

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that

- (1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

- (i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
 - (ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

Sole source acquisition means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

Solicitation means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called "invitations for bids." *Solicitations* under negotiated procedures are called "requests for proposals." Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

Solicitation provision or provision means a term or condition used only in solicitations and applying only before contract award.

Source selection information means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.
- (2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.
- (3) Source selection plans.
- (4) Technical evaluation plans.
- (5) Technical evaluations of proposals.
- (6) Cost or price evaluations of proposals.
- (7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.
- (8) Rankings of bids, proposals, or competitors.
- (9) Reports and evaluations of source selection panels, boards, or advisory councils.
- (10) Other information marked as "Source Selection Information—See FAR 2.101 and 3.104" based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

Special competency means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Federally Funded Research and Development Centers to meet some special need.

Special test equipment means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

State and local taxes means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

Statement of Objectives (SOO) means a Government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the Government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

Subline item means a subset of a line item.

Substantial evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

Substantially as follows or substantially the same as, when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

Supplemental agreement means a contract modification that is accomplished by the mutual action of the parties.

Supplies means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

Supporting a diplomatic or consular mission means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a Chief of Mission.

Surety means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

- (1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.
- (2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

- (3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA). (See 41 CFR 102-36.40).

Suspension means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is "suspended."

Sustainable acquisition means acquiring goods and services in order to create and maintain conditions—

- (1) Under which humans and nature can exist in productive harmony; and
- (2) That permit fulfilling the social, economic, and other requirements of present and future generations.

System for Award Management (SAM) means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

- (1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
- (2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
- (3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

Task order means an order for services placed against an established contract or with Government sources.

Taxpayer Identification Number (TIN) means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (see 41 U.S.C. 116).

Terminated portion of the contract means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

Termination for convenience means the exercise of the Government's right to completely or partially terminate performance of work under a contract when it is in the Government's interest.

Termination for default means the exercise of the Government's right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

Termination inventory means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

Unallowable cost means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

Unique and innovative concept, when used relative to an unsolicited research proposal, means that—

- (1) In the opinion and to the knowledge of the Government evaluator, the meritorious proposal—
 - (i) Is the product of original thinking submitted confidentially by one source;
 - (ii) Contains new, novel, or changed concepts, approaches, or methods;
 - (iii) Was not submitted previously by another; and
 - (iv) Is not otherwise available within the Federal Government.
- (2) In this context, the term does not mean that the source has the sole capability of performing the research.

Unique entity identifier means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

United States, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

- (1) For use in subpart 3.10, see the definition at 3.1001.
- (2) For use in subpart 22.8, see the definition at 22.801.
- (3) For use in subpart 22.10, see the definition at 22.1001.
- (4) For use in subpart 22.13, see the definition at 22.1301.
- (5) For use in subpart 22.16, see the definition at 22.1601.
- (6) For use in subpart 22.17, see the definition at 22.1702.
- (7) For use in subpart 22.18, see the definition at 22.1801.
- (8) For use in subpart 22.19, see the definition at 22.1901.
- (9) For use in part 23, see definition at 23.001.
- (10) For use in part 25, see the definition at 25.003.
- (11) For use in part 27, see the definition at 27.001.
- (12) For use in subpart 47.4, see the definition at 47.401.

Unsolicited proposal means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

Value engineering means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (41 U.S.C. 1711). For use in the clause at 52.248-2, see the definition at 52.248-2(b).

Value engineering change proposal (VECP) –

- (1) Means a proposal that—
 - (i) Requires a change to the instant contract to implement; and
 - (ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided, that it does not involve a change—
 - (A) In deliverable end item quantities only;
 - (B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or
 - (C) To the contract type only.
- (2) For use in the clauses at—
 - (i) 52.248-2, see the definition at 52.248-2(b); and
 - (ii) 52.248-3, see the definition at 52.248-3(b).

Veteran-owned small business concern means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

Virgin material means—

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
- (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

Voluntary consensus standards means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies (e.g., International Organization for Standardization (ISO) and ASTM-International). See OMB Circular A-119.

Warranty means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

Waste reduction means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Water consumption intensity means water consumption per square foot of building space.

Women-owned small business concern means—

- (1) A small business concern—
 - (i) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
 - (ii) Whose management and daily business operations are controlled by one or more women; or
- (2) A small business concern eligible under the Women-Owned Small Business Program in accordance with 13 CFR part 127 (see subpart 19.15).

Women-Owned Small Business (WOSB) Program.

- (1) ***Women-Owned Small Business (WOSB) Program*** means a program that authorizes contracting officers to limit competition, including award on a sole-source basis, to—
 - (i) Economically disadvantaged women-owned small business (EDWOSB) concerns eligible under the WOSB Program for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and
 - (ii) WOSB concerns eligible under the WOSB Program for Federal contracts assigned a NAICS code in an industry in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement.
- (2) ***Economically disadvantaged women-owned small business (EDWOSB) concern*** means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300. It automatically qualifies as a women-owned small business (WOSB) concern eligible under the WOSB Program.
- (3) ***Women-owned small business (WOSB) concern eligible under the WOSB Program*** means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

Writing or written (see "in writing").

[66 FR 2118, Jan. 10, 2001]

Editorial Notes: 1. For FEDERAL REGISTER citations affecting section 2.101, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.
2. At 88 FR 10058, Feb. 16, 2023, the effective date of the amendments to section 2.101 at 88 FR 9739, Feb. 14, 2023, was corrected from Feb. 14, 2023 to Mar. 16, 2023.

