**Procurement Checklist – Compliance with 2 C.F.R. Part 200**

**To be used when project is Federally Funded**

This checklist was created by FEMA and modified by the (Entity) to provide additional guidance. The (Entity type) must use this checklist as a guide to review each procurement and any resulting contract that is, or may be, funded in whole or in part using federal financial assistance (e.g., grants or cooperative agreements). Successful completion of the checklist will help to ensure compliance with the procurement standards of the government-wide Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 C.F.R. §§200.317 through 200.326.

Instructions: Each of the standards provided below is followed by a checkbox for “Yes,” “No,” or in some cases, “Not Applicable.” Boxes highlighted in Red indicate that the response which, if checked, indicates that the purchase or contract does not comply with federal requirements.

1. **General Requirement**
   * 1. The (Entity) Council has adopted and currently adheres to procurement policies which reflect applicable State and local laws and regulations (§200.318(a))?  YES  NO
        1. Have the procedures followed for this procurement adhered to that policy?  YES  NO
     2. The (Entity) is responsible to oversee the purchase or contract to ensure that all terms, conditions, and specifications align with contracts or purchase orders (§200.318(b)).  YES  NO
     3. The (Entity) Council maintains written standards of conduct covering conflicts of interest (including organizational conflicts of interest) and governing the performance of employees engaged in the section, award, and administration of purchases or contracts (§200.318(c))?  YES  NO
        1. Does any employee, elected official, officer, or agent participating in the selection, award, or administration of a purchase or contract supported by a federal award have an actual or apparent conflict of interest?[[1]](#footnote-1)  YES  NO
        2. Has any employee, elected official, officer or agent participating in the selection, award, or administration of a purchase or contract supported by a federal award solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or any party to contracts?  YES  NO
     4. It is the policy of the (Entity) to avoid acquisition of unnecessary or duplicative items. When appropriate, the (Entity) considers breaking out or consolidating procurements to a more economical purchase. When appropriate, the (Entity) considers lease vs. purchase alternatives (§200.318(d)).  YES  NO
     5. The (Entity) will 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 applied to documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements (§200.318(e). ☐ YES ☐ NO
     6. The (Entity) will use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs (§200.318(f).  YES  NO
     7. For construction contracts, the (Entity) considers using value engineering clauses[[2]](#footnote-2) for projects sufficient in size to offer reasonable opportunities for cost reductions (§200.318(g)).  YES  NO
     8. The contract is being awarded to a responsible contractor or vendor possessing the ability to perform successfully under the terms and conditions of the procurement, considering such matters as integrity, compliance with public policy, record of past performance, and financial and technical resources (§200.318(h)).  YES  NO
     9. The (Entity) requires maintenance of records sufficient to detail the history of the procurement, including but not limited to, records documenting the rationale for the method of procurement, selection of the contract type, contractor or vendor selection or rejection, and the basis for the price and this procurement adheres to this town policy (§200.318(i)).  YES  NO
     10. Is the contract a time-and-materials or time-and-equipment contract §200.318(j)?  YES  NO
         1. If so, has the (Entity) documented why no other contract type is suitable (see section 16 of the *Federal Acquisition Regulation*) §200.318 (j)(1)  YES  NO
         2. If so, does the contract include a ceiling price that the contractor exceeds at its own risk? §200.318 (j)(1)  YES  NO
         3. If so, does the (Entity) have in place procedures to assert a high degree of contractor oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls? §200.318 (j)(2)  YES  NO
     11. The (Entity) is responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements[[3]](#footnote-3)? §200.318(k)  YES  NO
2. **Competition:**
   1. All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. Does this procurement involve any of the following?[[4]](#footnote-4) §§200.319(a-b)
      * 1. Placing unreasonable requirements on firms to qualify them to do business?  YES  NO
        2. Requiring unnecessary experience and excessive bonding?  YES  NO
        3. Noncompetitive pricing practices between firms or between affiliated companies?[[5]](#footnote-5)  YES  NO
        4. Noncompetitive contracts to consultants that are on retainer contracts?[[6]](#footnote-6)  YES  NO
        5. Organizational conflicts of interest?  YES  NO
        6. Specifying a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement?  YES  NO
        7. Any arbitrary action in the procurement process?  YES  NO
   2. Was the contractor or vendor that is bidding on the procurement involved with developing or drafting the specifications, requirements, or statement of work, invitation for bids, or request for proposals? (if so, the firm must be excluded from competing for such procurements.) §200.319 (a)  YES  NO  N/A
   3. Procurements will prohibit 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. §200.319 (c)  YES  NO  N/A
   4. Does the contract include a state or local geographic preference for local contractors?[[7]](#footnote-7)  YES  NO
   5. In addition to complying with the Town’s policy, confirm the solicitation:
      1. Incorporates a clear and accurate description of the technical requirements for the material, product, or service to be procured. §200.319 (d)(1)  YES  NO
      2. Identifies all requirements which the offerors must fulfill and all other factors to be used in evaluating bids and proposals. §200.319 (d)(2)  YES  NO
   6. Is the (Entity) using a prequalified list of persons, firms, or products which are used in acquiring goods and services? §200.319(e)  YES  NO
      1. If so, is the list current?  YES  NO
      2. If so, does the list include enough qualified sources to ensure maximum open and free competition?  YES  NO
      3. If so, were any potential bidders precluded from qualifying during the solicitation period?  YES  NO
   7. The (Entity) will only award noncompetitive procurements in accordance with §200.320. §200.319(f).  YES  NO
3. **Method of Procurement**
   1. Confirm that one of the following acceptable methods of procurement was used §200.320:
      1. Micro-purchase (i.e., purchase below $3,500, see §200.67, Micro-purchases) §200.320(a)(1)  YES  NO  N/A
         1. Note: Micro-purchases may be awarded without soliciting competitive bids if the Town Manager believes the price is reasonable. Purchase cards may be used for micro-purchases if procedures are documents and approved in the (Entity) Procurement Policies.
         2. To the extent practicable, the (Entity) of distributes micro-purchases equitably among qualified vendors or firms.  YES  NO  N/A
         3. The micro-purchase threshold is determined and documented based on internal controls and is authorized or not prohibited under state and local laws and regulations.  YES  NO  N/A
      2. Small Purchases §200.320 (a)(2)  YES  NO  N/A
         1. Note: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the federal small purchase threshold of $150,000.
         2. Were price or rate quotations obtained from an adequate number of qualified sources as determined appropriate by the (Entity)?  YES  NO  N/A
         3. Did the (Entity) determine the appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and the Town Procedures Policy?  YES  NO  N/A
      3. Formal procurement methods, i. e. Sealed Bids §200.320 (b)[[8]](#footnote-8)  YES  NO
         1. Note: Bids are publicly solicited, and a firm 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 price. Sealed bidding is the preferred method for procuring construction.
         2. Did the (Entity) use formal procurement methods when the value of property, goods or services exceed the limit established in the Town Procurement Policies?  YES  NO  N/A
         3. Are all of the following conditions to use sealed bidding present? §200.320 (b)(1)  YES  NO
            1. A complete, adequate, and realistic specification or purchase description is available?  YES  NO
            2. Two or more responsible bidders are willing and able to compete effectively for the business?  YES  NO
            3. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price?  YES  NO
         4. If sealed bids are used, the following requirements apply §200.320 (b) (1)?
            1. Was the solicitation publicly advertised?  YES  NO
            2. Did the Town solicit bids from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids?[[9]](#footnote-9)  YES  NO
            3. Did the invitation for bids include any specifications and pertinent attachments, and define the items or services for the bidder to properly respond?  YES  NO
            4. Did the Town open all bids at the same time and place prescribed in the invitation for bids?  YES  NO
            5. Were the bids opened publicly?  YES  NO
            6. Did the (Entity) award a firm fixed price contract award in writing to the lowest responsive and responsible bidder?  YES  NO
            7. If any bids were rejected, was there sound documented support for the decision to reject?  YES  NO  N/A
      4. Procurement by proposals[[10]](#footnote-10) §200.320 (b)  YES  NO
         1. Note: The technique of proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is warded. It is generally used when conditions are not appropriate for use of sealed bids.
         2. The (Entity) publicize the Request for Proposals (RFPs) and identify all evaluation factors and their relative importance?  YES  NO
         3. Did (Entity) solicit proposals from an adequate number of resources?[[11]](#footnote-11)  YES  NO
         4. Did (Entity) have a written method for conducting technical evaluations of the proposals received for selecting recipients?  YES  NO
         5. Did (Entity) award the contract to the responsible firm whose proposal is most advantageous to the town, with price and others considered?  YES  NO
         6. Note: The (Entity) may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors’ qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E services. It cannot be used to purchase other types of services.
      5. Noncompetitive proposals §200.320 (c)  YES  NO
         1. Note: Procurement by noncompetitive proposals is an acceptable method of procurement under certain circumstances, where solicitation of proposals occurs from only one source or a limited number of sources.
         2. Does one or more of the following circumstances apply?  YES  NO
            1. The aggregate dollar amount of the property or services does not exceed the micro-purchase threshold.  YES  NO
            2. The item is available only from a single source?  YES  NO
            3. The public emergency or emergency for the requirement will not permit a delay resulting from competitive solicitation.[[12]](#footnote-12)  YES  NO
            4. The Federal awarding agency or pass-through entity expressly authorized noncompetitive proposals in response to the Town’s written request.  YES  NO
            5. After solicitation of several sources, competition is determined inadequate.[[13]](#footnote-13)  YES  NO
            6. Consistent with the Town’s Standard of Conduct and Procurement Policy, for any contract with an estimated value more than the Simplified Acquisition Threshold which, pursuant to 41 U.S.C. §403(1), is currently listed as $150,000, (Entity) Council approved the non-competitive proposals method as appropriate.  YES  NO
4. **Contracting with Small, Woman or Minority Owned Businesses (SWAM)**
   1. (Entity) has taken the following affirmative action steps to assure that minority businesses, woman’s business enterprises firms, and labor surplus area firms are used when possible. §200.321  YES  NO  N/A (must document)
      1. (Entity) places SWAM businesses on solicitation lists.  YES  NO  N/A (must document)
      2. (Entity) assures SWAM businesses are solicited whenever they are potential sources.  YES  NO  N/A (must document)
      3. (Entity) divides total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by SWAM businesses.  YES  NO  N/A (must document)
      4. Establish delivery schedules, where the requirement permits, which encourage participation by SWAM businesses.  YES  NO  N/A (must document)
      5. (Entity) uses, when feasible, such organizations such as Small Business Administration and the Minority Business Development Agency of the Department of Commerce.  YES  NO  N/A (must document)
      6. (Entity) requires the prime contractor, if subcontractors are used, to take affirmative action steps as listed above.  YES  NO  N/A (must document)
5. **Contract cost and price**
   1. If the contract amount (including contract modifications) exceeds $150,000, the (Entity) makes an independent estimate of the project cost before receiving bids. §200.324(a)  YES  NO  N/A
      1. NOTE: 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.
   2. (Entity) negotiates profit as a separate element for each contract in which there is no price competition and, in all cases, where a cost analysis is performed. §200.324 (b)  YES  NO  N/A
   3. 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 Town under subpart E of this part. The Town may reference its own cost principles that comply with the Federal cost principles.
   4. Is the contract a “cost plus percentage of cost” or “percentage of construction cost?” Note: These forms of contracts are prohibited under Federal procurement standards and ineligible for reimbursement. §200.324 (d)  YES  NO
6. **Federal awarding agency or pass-through entity review §200.325**
   1. Upon request, The Town will provide 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;  YES  NO  N/A
      2. The procurement is expected to exceed $150,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation:  YES  NO  N/A
      3. The procurement, which is expected to exceed $150,000, specifies a “brand name” product;  YES  NO  N/A
      4. The proposed contract is more than $150,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or  YES  NO  N/A
      5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than $150,000.  YES  NO  N/A
7. **Bonding requirements for construction or facility improvement contracts exceeding $150,000 §200.326**
   1. For construction or facility improvement contracts exceeding $150,000, does the procurement include the following?  YES  NO  N/A
      1. A bid guarantee from each bidder equivalent to five percent of the bid price.  YES  NO  N/A
         1. Note: 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.
         2. A performance bond on the part of the contractor for 100 percent of the contract price  YES  NO
            1. Note: A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
         3. A payment bond on the part of the contractor for 100 percent of the contract price  YES  NO
            1. 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 the contract.
8. **Does the contract include the following clauses? Appendix II to Part 200**
   1. If the contract amount exceeds $150,000, does it address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for sanctions and penalties?  YES  NO  N/A
   2. If the contract amount exceeds $10,000, does it address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.  YES  NO  N/A
   3. If it is for construction, does it include the required Equal Employment Opportunity clause?[[14]](#footnote-14)  YES  NO  N/A
   4. For construction projects, does the contract include a Davis-Bacon Act clause addressing prevailing wages and a Copeland “Anti-Kickback” Act clause prohibiting each contractor or subrecipient from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled?  YES  NO  N/A
   5. If the contract exceeds $100,000 and involves the employment of mechanics or laborers, does the contract include a Contract Work Hours and Safety Standards Act compliance clause?  YES  NO  N/A
   6. If the contract or subgrant exceeds $150,000, does the contract include clauses requiring compliance with the Clean Air Act and the Federal Water Pollution Control Act?  YES  NO  N/A
   7. Does the contract include a Suspension and Debarment clause? [[15]](#footnote-15)  YES  NO  N/A
   8. Does the contract include and Anti-Lobbying clause?[[16]](#footnote-16)  YES  NO  N/A
   9. Does the contract include a clause requiring the contractor to maximize use of recovered/recycled materials? §200.317, §200.323  YES  NO  N/A
   10. Does the contract prohibit using grant funds to purchase telecommunication equipment or services provided by companies described in §200.316?  YES  NO  N/A
   11. Does the contract provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States? §200.322  YES  NO  N/A
   12. Does the contract include a changes clause that described how, if at all, changes can be made by either party to alter the method, price, or schedule of work without breaching the contract?  YES  NO (recommended, not required)
   13. Does the contract include a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing access to records, accounts, documents, information, facilities, and staff?  YES  NO
   14. Does the contract include a provision prohibiting the contractor from using any town or federal agency seal, logo, or flags without prior written consent?  YES  NO
   15. Does the contract include and acknowledgement that federal financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal laws, regulations, executive orders, and federal agency policies, procedures, and directives?  YES  NO
   16. Does the contract include a provision stating that the Federal government is not a party to the contract and is not subject to any obligation or liabilities to any party pertaining to any matter resulting from the contract?  YES  NO
   17. Does the contract include a provision that the contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the actions pertaining to the contract?  YES  NO

END OF CHECKLIST

1. Such a conflict would arise when:

   The employee, elected official, officer or agent,

   Any member of his or her family,

   His or her partner, or

   An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected to the award. [↑](#footnote-ref-1)
2. Value engineering is a systemic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. [↑](#footnote-ref-2)
3. These issues include source evaluation, protests, disputes, and claims. [↑](#footnote-ref-3)
4. This list in non-exclusive and only serves as an example of some types of situations that are considered to be restrictive of competition. [↑](#footnote-ref-4)
5. For example, bid suppression or bid rigging [↑](#footnote-ref-5)
6. For example, out-of-scope disaster work added to the consultant’s work on retainer. [↑](#footnote-ref-6)
7. Geographic preferences are generally not allowed under federal grants. However, 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 award. [↑](#footnote-ref-7)
8. Sealed bidding is generally used where price is the most important evaluation factor. Accordingly, a contract awarded under sealed bidding method of procurement is made to the bidder submitting the lowest prices, responsive and responsible bid. “Responsive” refers to whether the bidder meets all the material requirements of the solicitation, while “responsibility” is described in §200.318 (h). [↑](#footnote-ref-8)
9. There is no definition of “adequate number” and while left undefined, the Town of (Entity) is likely to meet this requirement through the application of “full and open competition.” [↑](#footnote-ref-9)
10. Whereas contract awards under the sealed bidding are focused on selecting the lowest responsive bid, under this competitive procurement method, the Town of (Entity) may prioritize non-price factors, such as technical capability or past performance, over price and therefore award a contract to a contractor whose proposal not the lowest priced offer but reflects a better overall value to the Town (e.g., “best value” contracting). [↑](#footnote-ref-10)
11. There is no specific definitions for “adequate number” of qualified resources under the competitive procurement method. While left undefined, the (Entity) is likely to meet this requirement through the applications of “full and open competition.” [↑](#footnote-ref-11)
12. An “exigency” or “emergency” is a situation that calls for immediate action that will not permit the delay resulting from a competitive solicitation. Use of public exigency or emergency is only permissible during the actual emergency circumstance. Once the exigent or emergency circumstances cease to exist, (Entity) transitions to a more appropriate method of contracting for goods or services using full and open competition. [↑](#footnote-ref-12)
13. Before using this exception, the Town reviewed the solicitation and how it was publicized to ensure that it was not inadvertently drafted in a manner to reduce or eliminate competition, which resulted in the receipt of one or no proposals. If this is the case, (Entity) revises the solicitation to resolve competitive concerns. [↑](#footnote-ref-13)
14. The text of the clause may be found at 41 C.F.R. Part 60-1.4(b) [↑](#footnote-ref-14)
15. A prospective contractor that is listed on the government-wide Excluded Parties List System in SAM.gov as suspended or debarred, cannot be awarded a contract funded with Federal assistance. [↑](#footnote-ref-15)
16. The clause may read substantially as follows: Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352 (as amended). Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or any employee of any agency, member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient. [↑](#footnote-ref-16)