

MARSHALL COUNTY, IOWA PROCUREMENT POLICY

PURPOSE

The purpose of this procurement policy is to ensure that sound business judgement is utilized in all procurement transactions and that supplies, equipment, construction, and services are obtained efficiently and economically and in compliance with applicable federal and state law and executive orders and to ensure that all procurement transactions will be conducted in a manner that provides full and open competition. These procedures will ensure that all solicitations incorporate clear and accurate descriptions of the technical requirements for the goods or services being procured. Chapter 26 and Section 331.341 of the Iowa Code will be followed on all applicable purchases. All other appropriate sections of the Iowa Code shall also apply. Marshall County ensures compliance with the federal requirements at 2 CFR, Sections 200.318-200.327, as it applies to the procurement of all supplies, equipment, and construction and services that include any federal program funding, as well as all other appropriate sections of Iowa Code and Local Code. When federal requirements conflict with local or state requirements, the federal requirement, or most restrictive requirement will be followed.

APPLICATION

This policy applies to the procurement of all supplies, equipment, and construction and services of and for Marshall County, Iowa, that include any federal program funding. In regards to any such federal programs, all procurement will be done in accordance with 2 CFR; Part 200. Chapter 26 and Section 331.341 of the Iowa Code will be followed on all applicable purchases. All other appropriate sections of the Iowa Code shall also apply. When federal requirements conflict with local or state requirements, the federal requirement, or most restrictive requirement will be followed.

POLICY

METHODS OF PROCUREMENT

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) sealed bids (formal advertising); (c) competitive proposals; (d) noncompetitive proposals.

- A. Micro-Purchase Procedures 200.320(a)
 - i. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold - \$10,000 (200.67)
 - ii. To the extent practicable, must distribute micro-purchases equitably among qualified suppliers
 - iii. May be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable
- B. Small Purchase Procedures 200.320(b)
 - i. Are those relatively simple and informal procurement methods for securing services, supplies, or other property that does not cost more than the simplified acquisition threshold - \$250,000 (200.88)
 - ii. Price or rate quotations are to be obtained from an “adequate number” of qualified sources
- C. Sealed Bidding (formal advertising) 200.320(c)
 - i. Lowest priced, responsive, responsible, bidder WINS

- ii. The preferred method for construction when sealed bidding is “feasible”, which is when certain conditions are present
 - iii. Bids must be solicited from an “adequate number of known suppliers”, providing them sufficient response time before date for the opening of bids
 - iv. Bids will be opened at the time and place prescribed in the invitation for bids
 - v. Must publicly advertise the invitation for bids
 - vi. Bids must be opened publicly
 - vii. Other procedural requirements at 200.320(c)(2)
- D. Competitive Proposals 200.320(d)
- i. Used when conditions are not appropriate for the use of sealed bids
 - ii. The appropriate method when more than one source is expected to submit an offer and either a fixed-price or cost-reimbursement type contract is awarded
 - iii. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with **price** and other factors considered
 - iv. Requests for proposals **must be publicized** and identify all evaluation factors and their relative importance
 - v. Proposals must be solicited from an adequate number of qualified sources
 - vi. Must have written method for conducting technical evaluations of the proposals received and for selection of the contract
- E. Noncompetitive Proposals 200.320(f)
- i. Procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - a. **One Source:** the item is available only from a single source
 - b. **Exigency/Emergency:** an exigency or emergency will not permit a delay resulting from competitive solicitation
 - c. **Awarding Agency Approval:** the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity
 - d. **Inadequate Competition:** after the solicitation of a number of sources, competition is determined inadequate

CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS (200.321)

- A. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- B. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- C. 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;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;
- E. 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
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e).

§ 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.

CONTRACT PRICING (200.324)

- A. The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.
- B. Marshall County, Iowa, shall perform some form of cost/price analysis for every procurement action, including contract modifications, amendments, or change orders. Marshall County, Iowa, shall make an independent estimate prior to receiving a bid or proposal.
- C. Marshall County, Iowa, shall 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. In determining a fair and reasonable profit, Marshall County, Iowa, must consider 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 the industry profit rates in the surrounding geographical area.

PROCUREMENT RECORDS

Federal awarding agency or pass-through entity [HSEMD] review (200.325)

(a) Marshall County, Iowa, shall maintain records sufficient to detail the significant history of a procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(b) Marshall County, Iowa, 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.

(c) Marshall County, Iowa, 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) Marshall County, Iowa, 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.

(d) Marshall County, Iowa, 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) Marshall County, Iowa, 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) Marshall County, Iowa, 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 Marshall County, Iowa, that it is complying with these standards. Marshall County, Iowa, 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.

AWARDED CONTRACTS

- A. Marshall County, Iowa, will not award a contract to a party listed as debarred, suspended, or otherwise excluded in the System for Award Management (SAM). www.sam.gov (200.214)
- B. Contracts awarded shall contain the applicable contract provisions described in 2 CFR 200.327 and Appendix II to Part 200.
- C. Marshall County, Iowa, will maintain written standards of conduct covering conflicts of interest and must provide for disciplinary action to be applied for violations of such standards as defined in 2 CFR 200.318 (c) (1).

No officer, employee, or agent of the Marshall County, Iowa, shall participate in the selection, award, or administration of a contract supported by federal grant funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer, or agent;
- b. Any member of his/her immediate family;
- c. His/her partner; or

- d. An organization which employs, or is about to employ any of the above; has a financial or other interest in the firm selected for award.

Marshall County, Iowa, officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or subcontractors.

To the extent permitted by federal, state, or local law or regulations, violation of these standards may cause penalties, sanctions, or other disciplinary actions to be taken against Marshall County, Iowa, officers, employees, or agents.

Prohibition on certain telecommunications and video surveillance services or equipment (200.216)

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See [Public Law 115-232](#), section 889 for additional information.

(d) See also [§ 200.471](#).

Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58, which includes the Build America, Buy America Act (“the Act”). Pub. L. No. 117-58, §§ 70901-52. The Act strengthens Made in America Laws and will bolster America’s industrial base, protect national security, and support high-paying jobs. The Act requires that no later than May 14, 2022—180 days after the enactment of the IIJA—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” The Act affirms, consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers (“the Executive Order”), this Administration’s priority to “use terms and conditions of Federal financial assistance awards to maximize the use of goods, products, and materials produced in, and services offered in, the United States.”

This guidance applies to all Federal financial assistance as defined in section 200.1 of title 2, Code of Federal Regulations—whether or not funded through IJJA—where funds are appropriated or otherwise made available and used for a project for infrastructure. Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans, loan guarantees, and other types of financial assistance. The term “non-Federal entity” includes States, local governments, territories, Indian tribes, Institutions of Higher Education (IHE), and nonprofit organizations.

Passed and adopted this _____ day of _____, 2019.

Attest:

Chairman, Board of Supervisors

Auditor and Recorder