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agreements contained in part 4 of this chapter, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.”

§ 35.6405 Use.

The recipient must comply with the requirements regarding real property described in 2 CFR 200.311.

[79 FR 76060, Dec. 19, 2014]

COPYRIGHT REQUIREMENTS UNDER A COOPERATIVE AGREEMENT

§ 35.6450 General requirements.

The recipient must comply with the requirements regarding copyrights described in 2 CFR part 200.315. The recipient must comply with the requirements regarding contract copyright provisions described in § 35.6595(b)(2).

[72 FR 24504, May 2, 2007, as amended at 79 FR 76060, Dec. 19, 2014]

USE OF RECIPIENT EMPLOYEES (“FORCE ACCOUNT”) UNDER A COOPERATIVE AGREEMENT

§ 35.6500 General requirements.

(a) Force Account work is the use of the recipient’s own employees or equipment for construction, construction-related activities (including architecture and engineering services), or repair or improvement to a facility. When using Force Account work, the recipient must demonstrate that the employees can complete the work as competently as, and more economically than, contractors, or that an emergency necessitates the use of the Force Account.

(b) Where the value of Force Account services exceeds the simplified acquisition threshold, the recipient must receive written authorization for use from the award official.

PROCUREMENT REQUIREMENTS UNDER A COOPERATIVE AGREEMENT

§ 35.6550 Procurement system standards.

(a) *Recipient standards.* (1) In addition to the procurement standards described in 2 CFR 200.317 through 200.327 and 2 CFR part 1500, the State shall comply with the requirements in the following: Paragraphs (a)(5), (a)(9), and (b) of this

section, § 35.6555(c), in § 35.6565 the first sentence of the introductory text, the first sentence of paragraph (b), paragraph (d), and §§ 35.6570, 35.6575, and 35.6600. Political subdivisions and Tribes must follow all of the requirements included or referenced in this section through § 35.6610.

(2) *EPA review.* EPA reserves the right to review any recipient’s procurement system or procurement action under a Cooperative Agreement.

(3) *Code of conduct.* The recipient must comply with the requirements of 2 CFR 200.318 (c)(1) which describes standards of conduct for employees, officers, and agents of the recipient.

(4) *Completion of contractual and administrative issues.* (i) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of procurements under the Cooperative Agreement.

(ii) EPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern.

(iii) Violations of law will be referred to the local, State, Tribal, or Federal authority having proper jurisdiction.

(5) *Selection procedures.* The recipient must have written selection procedures for procurement transactions.

(i) EPA may not participate in a recipient’s selection panel except to provide technical assistance. EPA staff providing such technical assistance:

(A) Shall constitute a minority of the selection panel (limited to making recommendations on qualified offers and acceptable proposals based on published evaluation criteria) for the contractor selection process; and

(B) Are not permitted to participate in the negotiation and award of contracts.

(ii) When selecting a contractor, recipients:

(A) May not use EPA contractors to provide any support related to procuring a State contractor.

(B) May use the Corps of Engineers for review of State bidding documents, requests for proposals and bids and proposals received.

(6) *Award.* The recipient may award a contract only to a responsible contractor, as described in 2 CFR 200.318 (h) and must ensure that each contractor performs in accordance with all the provisions of the contract. (See also § 35.6020.)

(7) *Protest procedures.* The recipient must comply with the requirements described in 2 CFR 200.318 (k) regarding protest procedures.

(8) [Reserved]

(9) *Intergovernmental agreements.* (i) To foster greater economy and efficiency, recipients are encouraged to enter into intergovernmental agreements for procurement or use of common goods and services.

(ii) Although intergovernmental agreements are not subject to the requirements set forth in this section through § 35.6610, all procurements under intergovernmental agreements are subject to these requirements except for procurements that are:

(A) Incidental to the purpose of the assistance agreement; and

(B) Made through a central public procurement unit.

(10) *Value engineering.* The recipient is encouraged to include value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

(b) *Contractor standards—(1) Disclosure requirements regarding Potentially Responsible Party relationships.* The recipient must require each prospective contractor to provide with its bid or proposal:

(i) Information on its financial and business relationship with all PRPs at the site and with the contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients at the site. Prospective contractors under a Core Program Cooperative Agreement must provide comparable information for all sites within the recipient's jurisdiction. (This disclosure requirement encompasses past financial and business relationships, including services related to any proposed or pending litigation, with such parties);

(ii) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(iii) A statement that it shall disclose immediately any such information discovered after submission of its bid or proposal or after award. The recipient shall evaluate such information and if a member of the contract team has a conflict of interest which prevents the team from serving the best interests of the recipient, the prospective contractor may be declared non-responsible and the contract awarded to the next eligible bidder or offeror.

(2) *Conflict of interest—(i) Conflict of interest notification.* The recipient must require the contractor to notify the recipient of any actual, apparent, or potential conflict of interest regarding any individual working on a contract assignment or having access to information regarding the contract. This notification shall include both organizational conflicts of interest and personal conflicts of interest. If a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

(ii) *Contract provisions.* The recipient must incorporate the following provisions or their equivalents into all contracts, except those for well-drilling, fence erecting, plumbing, utility hook-ups, security guard services, or electrical services:

(A) *Contractor data.* The contractor shall not provide data generated or otherwise obtained in the performance of contractor responsibilities under a contract to any party other than the recipient, EPA, or its authorized agents for the life of the contract, and for a period of five years after completion of the contract.

(B) *Employment.* The contractor shall not accept employment from any party other than the recipient or Federal agencies for work directly related to the site(s) covered under the contract for five years after the contract has terminated. The recipient agency may exempt the contractor from this requirement through a written release. This release must include EPA concurrence.

(3) *Certification of independent price determination.* The recipient must require that each contractor include in

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its bid or proposal a certification of independent price determination. This document certifies that no collusion, as defined by Federal and State anti-trust laws, occurred during bid preparation.

(4) *Recipient's Contractors.* The recipient must require its contractor to comply with the requirements in §§ 35.6270(a)(1) and (2); 35.6320 (a) and (b); 35.6335; 35.6700; and 35.6705. For additional contractor requirements, see also § 35.6710(c); 35.6590(b); and 35.6610.

[72 FR 24504, May 2, 2007, as amended at 73 FR 15922, Mar. 26, 2008; 79 FR 76060, Dec. 19, 2014; 87 FR 30400, May 19, 2022]

§ 35.6555 Competition.

The recipient must conduct all procurement transactions in a manner providing maximum full and open competition.

(a) *Restrictions on competition.* Inappropriate restrictions on competition include the following:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding requirements;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive awards 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 of other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) *Geographic and Indian Tribe preferences*—(1) *Geographic.* When conducting a procurement, the recipient must prohibit the use of statutorily or administratively imposed in-State or local geographical preferences in evaluating bids or proposals. However, nothing in this section preempts State licensing laws. In addition, when contracting for architectural and engineering (A/E) services, the recipient may use geographic location as a selection criterion, provided that when geographic location is used, its application leaves an appropriate number of quali-

fied firms, given the nature and size of the project, to compete for the contract.

(2) *Indian Tribe.* Any contract or subcontract awarded by an Indian Tribe or Indian intertribal consortium shall comply with the requirements of the Indian Self Determination Act.

(c) *Written specifications.* The recipient's written specifications must include a clear and accurate description of the technical requirements and the qualitative nature of the material, product or service to be procured.

(1) This description must not contain features which unduly restrict competition, unless the features are necessary to:

(i) Test or demonstrate a specific thing;

(ii) Provide for necessary interchangeability of parts and equipment; or

(iii) Promote innovative technologies.

(2) The recipient must avoid the use of detailed product specifications if at all possible.

(d) *Public notice.* When soliciting bids or proposals, the recipient must allow sufficient time (generally 30 calendar days) between public notice of the proposed project and the deadline for receipt of bids or proposals. The recipient must publish the public notice in professional journals, newspapers, or publications of general circulation over a reasonable area.

(e) *Prequalified lists.* Recipients may use prequalified lists of persons, firms, or products to acquire goods and services. The list must be current and include enough qualified sources to ensure maximum open and free competition. Recipients must not preclude potential bidders from qualifying during the solicitation period.

[72 FR 24504, May 2, 2007, as amended at 79 FR 76060, Dec. 19, 2014]

§ 35.6565 Procurement methods.

The recipient must comply with the requirements for payment to consultants described in 2 CFR 1500.10. In addition, the recipient must comply with the following requirements: