**ADDITIONAL ACQUISITION RULES WITH USE OF FEDERAL FUNDING**

**From Title 2 C.F.R**

Color means take notice.

Color means beware!

§ 200.317 Procurements by states.

When procuring property and services under a [Federal award](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=081a194046528468942c369470c2966a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.317), a [State](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.317) must follow the same policies and procedures it uses for procurements from its non-Federal funds. The [State](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.317) will comply with [§§ 200.321](https://www.law.cornell.edu/cfr/text/2/200.321), 200.322, and 200.323 and ensure that every purchase order or other [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.317) includes any clauses required by [§ 200.327](https://www.law.cornell.edu/cfr/text/2/200.327). All other non-Federal entities, including [subrecipients](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=63d6349963f7364efb8397442e14e141&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.317) of a [State](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.317), must follow the procurement standards in [§§ 200.318](https://www.law.cornell.edu/cfr/text/2/200.318) through 200.327.

§ 200.318 General procurement standards.

(a) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) must have and use documented procurement procedures, consistent with [State](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318), local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a [Federal award](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=081a194046528468942c369470c2966a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) or [subaward](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=cd3b6bbdd85489e2f50207d7536faf9a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318). The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318)'s documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](https://www.law.cornell.edu/cfr/text/2/200.317) through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that [contractors](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)

(1) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318). No employee, officer, or agent may participate in the selection, award, or administration of a [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) supported by a [Federal award](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=081a194046528468942c369470c2966a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318). The officers, employees, and agents of the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) may neither solicit nor accept gratuities, favors, or anything of monetary value from [contractors](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318).

(2) If the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) has a parent, affiliate, or [subsidiary](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=42db8aa7497eb8b687aaf373293fcf8a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) organization that is not a [State](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318), [local government](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2351077af91a56a86cf7de12032e8194&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318), or [Indian tribe](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2f3422fdfc29b5b6e44d5a6de124a7d8&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318), the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=42db8aa7497eb8b687aaf373293fcf8a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) organization, the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318)'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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) is encouraged to enter into [state](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) is encouraged to use value engineering clauses in [contracts](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) item or task to ensure that its essential function is provided at the overall lower cost.

(h) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) must award [contracts](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) only to responsible [contractors](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as [contractor](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) integrity, compliance with public [policy](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d7d23b68f8d3d33cf76dc014dc176590&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318), record of past performance, and financial and technical resources. See also [§ 200.214](https://www.law.cornell.edu/cfr/text/2/200.214).

(i) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) type, [contractor](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) selection or rejection, and the basis for the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) price.

(j)

(1) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) may use a time-and-materials type [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) only after a determination that no other [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) is suitable and if the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) includes a ceiling price that the [contractor](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) exceeds at its own risk. Time-and-materials type [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) means a [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) whose cost to a [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) price, a time-and-materials [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) provides no positive profit incentive to the [contractor](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) for cost control or labor efficiency. Therefore, each [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) must set a ceiling price that the [contractor](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) exceeds at its own risk. Further, the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) awarding such a [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) must assert a high degree of oversight in order to obtain reasonable assurance that the [contractor](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) is using efficient methods and effective cost controls.

(k) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) of any contractual responsibilities under its contracts. The [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) will not substitute its judgment for that of the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318) unless the matter is primarily a Federal concern. Violations of law will be referred to the local, [state](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.318), or Federal authority having proper jurisdiction.

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a [Federal award](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=081a194046528468942c369470c2966a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) must be conducted in a manner providing full and open competition consistent with the standards of this section and [§ 200.320](https://www.law.cornell.edu/cfr/text/2/200.320).

(b) In order to ensure objective [contractor](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) performance and eliminate unfair competitive advantage, [contractors](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) to consultants that are on retainer [contracts](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319);

(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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed [state](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319), 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319).

(d) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.319) must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with [§ 200.320(c)](https://www.law.cornell.edu/cfr/text/2/200.320#c).

§ 200.320 Methods of procurement to be followed.

The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) must have and use documented procurement procedures, consistent with the standards of this section and [§§ 200.317](https://www.law.cornell.edu/cfr/text/2/200.317), 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=081a194046528468942c369470c2966a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) or sub-award.

(a) Informal procurement methods. When the value of the procurement for property or services under a [Federal award](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=081a194046528468942c369470c2966a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) does not exceed the simplified acquisition threshold (SAT), as defined in [§ 200.1](https://www.law.cornell.edu/cfr/text/2/200.1), or a lower threshold established by a [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320), formal procurement methods are not required. The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=392828a9826f92646445c462519eba52&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) (See the definition of micro-purchase in [§ 200.1](https://www.law.cornell.edu/cfr/text/2/200.1)). To the maximum extent practicable, the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) should distribute [micro-purchases](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2f143bc9a7872a29279644e5ab556885&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) equitably among qualified suppliers.

(ii) Micro-purchase awards. [Micro-purchases](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2f143bc9a7872a29279644e5ab556885&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) may be awarded without soliciting competitive price or rate quotations if the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2f143bc9a7872a29279644e5ab556885&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) if procedures are documented and approved by the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320).

(iii) Micro-purchase thresholds. The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) is responsible for determining and documenting an appropriate [micro-purchase threshold](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=392828a9826f92646445c462519eba52&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) based on [internal controls](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=324fa91677a98769725e19babb9a4495&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320), an evaluation of risk, and its documented procurement procedures. The [micro-purchase threshold](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=392828a9826f92646445c462519eba52&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) used by the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) must be authorized or not prohibited under [State](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320), 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=392828a9826f92646445c462519eba52&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) identified in the FAR in accordance with the requirements of this section. The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) and [auditors](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=c6470249488b143bf1689ac033953b0a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) in accordance with [§ 200.334](https://www.law.cornell.edu/cfr/text/2/200.334). 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=c0103e45d2b33226dc68a109ae59ddd9&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320), in accordance with the criteria in [§ 200.520](https://www.law.cornell.edu/cfr/text/2/200.520) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) law.

(v) Non-Federal entity increase to the micro-purchase threshold over $50,000. [Micro-purchase](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=2f143bc9a7872a29279644e5ab556885&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) thresholds higher than $50,000 must be approved by the [cognizant agency for indirect costs](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=9cd550a3cf4c42cf2d2357cb601da43e&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320). The [non-federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) must submit a request with the requirements included in [paragraph (a)(1)(iv)](https://www.law.cornell.edu/cfr/text/2/200.320#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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=392828a9826f92646445c462519eba52&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) but does not exceed the [simplified acquisition threshold](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320). 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320).

(ii) Simplified acquisition thresholds. The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) is responsible for determining an appropriate [simplified acquisition threshold](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) based on [internal controls](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=324fa91677a98769725e19babb9a4495&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320), 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) used by the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) must be authorized or not prohibited under [State](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320), 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=32ad9bbe5aeb366fd37b0e2045021102&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) award exceeds the SAT, or a lower threshold established by a [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320), 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](https://www.law.cornell.edu/cfr/text/2/200.319) or [paragraph (c)](https://www.law.cornell.edu/cfr/text/2/200.320#c) of this section. The following formal methods of procurement are used for procurement of property or services above the [simplified acquisition threshold](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) or a value below the [simplified acquisition threshold](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) determines to be appropriate:

(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) (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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) [Contracts](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) must be awarded to the responsible offeror whose proposal is most advantageous to the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320), with price and other factors considered; and

(iv) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=392828a9826f92646445c462519eba52&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) (see [paragraph (a)(1)](https://www.law.cornell.edu/cfr/text/2/200.320#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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) or [pass-through entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3c30c7fcabf85260bb176c07e6d95a5&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320) expressly authorizes a noncompetitive procurement in response to a written request from the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.320); 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.321) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=8cb0d5b7b8f071bdd6dd7b70c5f08e91&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.321), 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.322) should, to the greatest extent practicable under a [Federal award](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=081a194046528468942c369470c2966a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.322), provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United [States](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3d66cac5fd675bfc76ede4888b240176&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.322) (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all [subawards](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=cd3b6bbdd85489e2f50207d7536faf9a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.322) including all [contracts](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.322) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) or [pass-through entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3c30c7fcabf85260bb176c07e6d95a5&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) review.

(a) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) must make available, upon request of the [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) or [pass-through entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3c30c7fcabf85260bb176c07e6d95a5&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325), technical specifications on proposed procurements where the [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) or [pass-through entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3c30c7fcabf85260bb176c07e6d95a5&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) desires to have the review accomplished after a solicitation has been developed, the [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) or [pass-through entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3c30c7fcabf85260bb176c07e6d95a5&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) must make available upon request, for the [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) or [pass-through entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3c30c7fcabf85260bb176c07e6d95a5&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325)'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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325), specifies a “brand name” product;

(4) The proposed [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) is more than the [Simplified Acquisition Threshold](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) modification changes the scope of a [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) or increases the [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) amount by more than the [Simplified Acquisition Threshold](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=66879d044cf16c17819f6eddafc6580d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325).

(c) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) is exempt from the pre-procurement review in [paragraph (b)](https://www.law.cornell.edu/cfr/text/2/200.325#b) of this section if the [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) or [pass-through entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3c30c7fcabf85260bb176c07e6d95a5&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) determines that its procurement systems comply with the standards of this part.

(1) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) may request that its procurement system be reviewed by the [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) or [pass-through entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=d3c30c7fcabf85260bb176c07e6d95a5&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) are awarded on a regular basis;

(2) The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) may self-certify its procurement system. Such self-certification must not limit the [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325)'s right to survey the system. Under a self-certification procedure, the [Federal awarding agency](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=3164f893d6d82447c92d899285ce22b2&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) may rely on written assurances from the [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) that it is complying with these standards. The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=de00dfd10f09071c905d0928428a197d&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:28:200.325) 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.

[Back to Top](https://www.ecfr.gov/cgi-bin/text-idx?node=sp2.1.200.d&rgn=div6#_top)

## §200.327   Contract provisions.

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

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](https://www.law.cornell.edu/uscode/text/41/1908), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](https://www.law.cornell.edu/cfr/text/41/part-60), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1](https://www.law.cornell.edu/cfr/text/41/part-60-1).3 must include the equal opportunity clause provided under [41](https://www.law.cornell.edu/cfr/text/41) CFR 60-1.4(b), in accordance with [Executive Order 11246](https://www.govinfo.gov/link/cpd/executiveorder/11246), “Equal Employment Opportunity” ([30 FR 12319](https://www.law.cornell.edu/rio/citation/30_FR_12319), 12935, [3](https://www.law.cornell.edu/cfr/text/3) CFR Part, 1964-1965 Comp., p. 339), as amended by [Executive Order 11375](https://www.govinfo.gov/link/cpd/executiveorder/11375), “Amending [Executive Order 11246](https://www.govinfo.gov/link/cpd/executiveorder/11246) Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](https://www.law.cornell.edu/cfr/text/41/part-60), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) [Davis-Bacon Act](https://www.law.cornell.edu/topn/bacon-davis_act), as amended ([40](https://www.law.cornell.edu/uscode/text/40) U.S.C. [3141](https://www.law.cornell.edu/uscode/text/40/3141)-[3148](https://www.law.cornell.edu/uscode/text/40/3148)). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the [Davis-Bacon Act](https://www.law.cornell.edu/topn/bacon-davis_act) ([40](https://www.law.cornell.edu/uscode/text/40) U.S.C. [3141](https://www.law.cornell.edu/uscode/text/40/3141)-[3144](https://www.law.cornell.edu/uscode/text/40/3144), and [3146](https://www.law.cornell.edu/uscode/text/40/3146)-[3148](https://www.law.cornell.edu/uscode/text/40/3148)) as supplemented by Department of Labor regulations ([29 CFR Part 5](https://www.law.cornell.edu/cfr/text/29/part-5), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](https://www.law.cornell.edu/uscode/text/40/3145)), as supplemented by Department of Labor regulations ([29 CFR Part 3](https://www.law.cornell.edu/cfr/text/29/part-3), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) [Contract Work Hours and Safety Standards Act](https://www.law.cornell.edu/topn/contract_work_hours_and_safety_standards_act) ([40](https://www.law.cornell.edu/uscode/text/40) U.S.C. [3701](https://www.law.cornell.edu/uscode/text/40/3701)-[3708](https://www.law.cornell.edu/uscode/text/40/3708)). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40](https://www.law.cornell.edu/uscode/text/40) U.S.C. [3702](https://www.law.cornell.edu/uscode/text/40/3702) and [3704](https://www.law.cornell.edu/uscode/text/40/3704), as supplemented by Department of Labor regulations ([29 CFR Part 5](https://www.law.cornell.edu/cfr/text/29/part-5)). Under [40 U.S.C. 3702](https://www.law.cornell.edu/uscode/text/40/3702) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](https://www.law.cornell.edu/uscode/text/40/3704) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2](https://www.law.cornell.edu/cfr/text/37/401.2) (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](https://www.law.cornell.edu/cfr/text/37/part-401), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) [Clean Air Act](https://www.law.cornell.edu/topn/air_pollution_control_act) ([42](https://www.law.cornell.edu/uscode/text/42) U.S.C. [7401](https://www.law.cornell.edu/uscode/text/42/7401)-[7671q](https://www.law.cornell.edu/uscode/text/42/7671q).) and the [Federal Water Pollution Control Act](https://www.law.cornell.edu/topn/clean_water_act) ([33](https://www.law.cornell.edu/uscode/text/33) U.S.C. [1251](https://www.law.cornell.edu/uscode/text/33/1251)-[1387](https://www.law.cornell.edu/uscode/text/33/1387)), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the [Clean Air Act](https://www.law.cornell.edu/topn/air_pollution_control_act) ([42](https://www.law.cornell.edu/uscode/text/42) U.S.C. [7401](https://www.law.cornell.edu/uscode/text/42/7401)-[7671q](https://www.law.cornell.edu/uscode/text/42/7671q)) and the [Federal Water Pollution Control Act](https://www.law.cornell.edu/topn/clean_water_act) as amended ([33](https://www.law.cornell.edu/uscode/text/33) U.S.C. [1251](https://www.law.cornell.edu/uscode/text/33/1251)-[1387](https://www.law.cornell.edu/uscode/text/33/1387)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](https://www.law.cornell.edu/cfr/text/2/180.220)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2](https://www.law.cornell.edu/cfr/text/2) CFR 180 that implement Executive Orders 12549 ([3 CFR part 1986](https://www.law.cornell.edu/cfr/text/3/part-1986) Comp., p. 189) and 12689 ([3 CFR part 1989](https://www.law.cornell.edu/cfr/text/3/part-1989) Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](https://www.govinfo.gov/link/cpd/executiveorder/12549).

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

(J) See [§ 200.323](https://www.law.cornell.edu/cfr/text/2/200.323).

(K) See [§ 200.216](https://www.law.cornell.edu/cfr/text/2/200.216).

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) [Recipients](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=43f1e6e5f743631c4c46a5423693f35c&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:C:200.216) and sub [recipients](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=43f1e6e5f743631c4c46a5423693f35c&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:C:200.216) are prohibited from obligating or expending [loan](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=278b8bc35d5ec1b2249d034652236033&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:C:200.216) or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:C:200.216) to procure or obtain; or

(3) Enter into a [contract](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=646059bc8aa88050a7cb06464725dfbb&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:C:200.216) (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](https://www.law.cornell.edu/rio/citation/Pub._L._115-232), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any [subsidiary](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=42db8aa7497eb8b687aaf373293fcf8a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:C:200.216) 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](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=42db8aa7497eb8b687aaf373293fcf8a&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:C:200.216) 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](https://www.law.cornell.edu/rio/citation/Pub._L._115-232), section 889, subsection (f), paragraph (1), heads of executive agencies administering [loan](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=278b8bc35d5ec1b2249d034652236033&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:C:200.216), 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](https://www.law.cornell.edu/rio/citation/Pub._L._115-232), section 889 for additional information.

(d) See also [§ 200.471](https://www.law.cornell.edu/cfr/text/2/200.471).

(L) See [§ 200.322](https://www.law.cornell.edu/cfr/text/2/200.322).