

Procurement Guidelines for Purchases Made with Federal Funds (Grants)

These guidelines supplement the District's standard procurement policy and should be followed for any purchase made with federal funds.

The small purchase threshold for the procurement of goods and services under Federal Grants is referred to as "simplified acquisition threshold" and is defined per codes listed below:

- \$100,000 per 41 U.S.C. 403(11). Definitions¹
- \$250,000 per FAR Section 2.101 Definitions²

However, despite any federal thresholds for small purchases, the District shall follow the "most restrictive rule," and follow the District's current bid threshold (which is adjusted annually by the State).

1. GENERAL GUIDELINES FOR PURCHASES

1.1. All purchases must be in compliance with the District's Board Policy 3121, Standards of Ethical Conduct³.

- In addition, no employee, officer, or agent of the District shall participate in the procurement of goods and equipment supported by grant funds (whether federal or private) if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of these parties, has a financial or other interest in the firm selected for an award or purchase.
- The officers, employees, and agents of the District shall neither solicit nor accept gratuities, favors, or anything of monetary value from vendors or contractors.

1.2. The vendor or contractor that meets the required specifications at the lowest cost should be selected. Regardless of the cost of acquisition, grant recipients are required to avoid purchasing unnecessary items. If the cost to purchase a larger quantity is cheaper than the quantity you need, federal guidelines require that only the quantity needed should be purchased.

¹ 41 U.S.C. 403(11) link: <https://www.govinfo.gov/content/pkg/USCODE-2009-title41/html/USCODE-2009-title41-chap7-sec403.htm>

² FAR 2.101 Definitions: <https://www.acquisition.gov/far/2.101>

³ BP 3121: <http://go.boarddocs.com/ca/fhda/Board.nsf/goto?open&id=9TTNBH5EFFD0>

2. REQUISITIONS

- 2.1. The requisitioner of federal grant funded purchases is responsible for indicating on the requisition that the purchase is funded by a federal grant. The requisitioner is also responsible for identifying the Capital Equipment “account” when applicable.
 - If the requisition does not indicate “federal grant,” the Buyer will not know to follow the federal grant guidelines.
 - For amounts of \$25,000 or more, vendors must be verified that they do not appear on the Excluded Parties Listing using the search function of [SAM \(System for Award Management\)](#). Requisitioner should verify that vendors do not appear on the Excluded Parties Listing prior to submitting a requisition. A scan of results should be attached to the requisition to document the search was done.
- 2.2. The Grants Office is responsible to ensure the requisition is entered correctly with appropriate notations and account codes.
- 2.3. The Project Director/Principal Investigator along with the Financial Manager is responsible for managing the grant funds as well as respond to any audit concerns.

3. DOCUMENTATION REQUIREMENTS

- 3.1. Documentation must be maintained for single or cumulative purchases from a single vendor within a fiscal year that exceed \$10,000. The documentation must be sufficient to detail procurement history. A quote is a written statement from a vendor regarding the price for a specific good or service. Quotes and bids should include specifications and qualifying characteristics considered by vendor/contractor including delivery and time frame, scope of work, references, and other relevant specifications.
- 3.2. Procurement and service contract documentation must contain the following:
 - 3.2.1. **Basis for vendor selection.** Basis for the vendor/contractor selection. Information showing how the District arrived at the decision to award the contract to that particular vendor/contractor.
 - 3.2.2. **Justification letter** for lack of competition when competitive bids or offers are not obtained.
 - 3.2.3. **Basis for award.** Basis for the award cost or price: the cost and price analysis should be documented to establish that the institution obtained a fair price.
 - 3.2.4. **Debarment and Suspension (\$25,000 or more).** No purchases shall be made from parties including sub-awards who have been involved in fraud, waste or abuse. The General Service Administration's (GSA) lists the names of parties debarred, suspended, or otherwise excluded by agencies. It is necessary to complete and document a Debarment and Suspension check before a purchase is made.

- The Purchasing Buyer is responsible to ensure the [sam.gov](https://www.sam.gov) website was checked for debarment and suspension and documentation attached prior to approving purchases.

3.3. Additional documentation should be included, if:

- A sole source purchase
- A minimum number of cost estimates and quotations are not obtained
- Lowest cost bid is not selected

4. CONTRACT CLAUSES

The Purchasing Buyer must include all federal contract clauses.

4.1. The required contract provisions must be included in all contracts, see example language in **Exhibit A**.

4.2. The clauses that must be included in any particular purchase order or contract will depend on the dollar amount of the purchase order or contract and the type of goods or services that the District is procuring. Other contract provisions may be required depending on the grant, Buyer must review requirements for applicability.

4.2.1. For Example, FEMA contract information can be found at below links:

- https://www.fema.gov/sites/default/files/2020-07/fema_procurement_contract-provisions-template.pdf
- <https://www.fema.gov/grants/procurement>

5. OWNERSHIP OF ITEMS PURCHASED WITH GRANT FUNDS

Items and equipment purchased with grant funds belong to the District. All institutional policies regarding capital equipment, purchasing, and procurement apply.

6. CAPITAL EQUIPMENT

Capital Equipment is defined as "tangible nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit." All costs associated with making the asset serviceable can be capitalized i.e., installation charges and freight. Equipment acquired with external support becomes the property of the District unless restricted by the sponsor.

6.1. Grant Owner/Department is required to ensure the proper receipt of the equipment, track equipment, participate in inventories and notify Grants Office with regard to condition, location, loss or damage to the equipment. The Owner/Department establishes maintenance procedures and records and are responsible for the operational condition of the equipment.

- 6.2. Record Keeping: The Grants Office maintains Fixed Assets records.
- 6.3. Inventory: The Grants Office along with the Grant Owner/Department tags new assets annually. The Department performs a physical inventory of equipment purchased with grant funds every two years and verifies the existence and condition of the equipment to the Grants Office.
- 6.4. Disposal: If an item purchased with grant funds is determined to be obsolete, and the item's value exceeds \$5,000, disposition rules must be followed. This may include requesting disposition instructions from the awarding agency. Possible disposition practices may require compensating the Federal awarding agency for its proportion of the original cost applied to the fair market value. It is the responsibility of the Project Director/Principal Investigator/Financial Manager/Department to notify the Grants Office if disposing of an asset purchased with federal funds.

EXHIBIT A – FEMA Additional Terms and Conditions

The following FEMA clauses set forth herein are included as a part of the PO and/or Agreement.

1. TERMINATION FOR CAUSE AND CONVENIENCE

The District may, at any time, terminate the Agreement for the District's convenience and without cause. Upon receipt of written notice from the District of such termination for the District's convenience, the Contractor shall (1) cease operations as directed by the District in the notice; (2) take actions necessary, or that the District may direct, for the protection and preservation of the work; and (3) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the District's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination.

2. DEBARMENT AND SUSPENSION

- 2.1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor agrees to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935)
- 2.2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 2.3. This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 2.4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3. BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used 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. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

4. PROCUREMENT OF RECOVERED MATERIALS

- 4.1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
- Competitively within a timeframe providing for compliance with the contract performance schedule;
 - Meeting contract performance requirements; or
 - At a reasonable price.
- 4.2. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- 4.3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the "Solid Waste Disposal Act."

5. ACCESS TO RECORDS

Access to Records. The following access to records requirements apply to this contract:

- 5.1. The Contractor agrees to provide Foothill De Anza Community College District (Attn: Controller) , the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- 5.2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 5.3. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- 5.4. In compliance with the Disaster Recovery Act of 2018, the Foothill De Anza Community College District and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

6. CHANGES

Any changes to this PO or Agreement that relate to (i) the deletion of Products or Services, (ii) adding additional Products, or Services (iii) changing or modifying Products or Services, or (iv) making other changes that materially alter the scope of this Agreement or the Deliverables required under this Agreement, including approval of all performance and/or payment schedules shall be made in accordance with the procedures set forth below.

- Requests for changes shall be in writing and shall be addressed and delivered to the other party. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the Products, Services, Deliverables or Schedules to be changed.
- The Change Order CO shall describe the change, delineate the cost, schedule, and other impacts of the change and the payment terms for any price increase. Only District's Director of Purchasing and Contractor's Authorized Representative shall have authority to execute Change Orders to this Agreement. Execution of a Change Order by District's Director of Purchasing and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both parties hereto.

7. DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

8. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

9. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

10. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.