

Supplement Insertion Instructions

Supplement Name:	Appendix E Contracting and Procurement
Location for Insertion	
Tab:	III Grant Application and Award Guidance
After Document:	After Appendix D Property Inventory Report Replace page: “Appendix E Contracting and Procurement <i>To be developed</i> ”
Supplement Contents:	Appendix E-1 Contracting Appendix E-2 Procurement Appendix E-3 Procurement Method Report Appendix E-3 Attachment A Sole Source Checklist Appendix E-3 Attachment B Negotiated Abstract
Supplement Date:	September 11, 2006

Revision Number: 2

APPENDIX E-1

DHS&EM Addendum for Federally Required Contract Provisions

“Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” †§____.36 Procurement (i) Contract Provisions

A grantee’s and subgrantee’s contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
(Contracts more than the simplified acquisition threshold: > \$100,000.)
2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement.
(All contracts in excess of \$10,000.)
3. Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
Prohibits federal contractors from discriminating in employment on the basis of race, sex, religion, color or national origin. It also requires contractors to take affirmative action so that minorities and women have equal job opportunities and requires federal contracts to include a clause spelling out contractor’s non discrimination and affirmative action obligations. Contractors with contracts of \$50,000 or more and at least 50 employees are required to have written affirmative action compliance programs.

The Vietnam-Era Veteran’s Readjustment Assistance Act of 1974 (VEVRAA) (41 CFR Part 60-250) is applicable to a federal contract or subcontract for \$10,000 or more.

Requires contractors and subcontractors provide equal opportunity and affirmative action to hire and promote qualified special disabled veterans and veterans from the Vietnam era. Neither shall they discriminate against any special disabled veteran or Vietnam era veteran employee or applicant for employment.

4. Compliance with Copeland “Anti-Kickback” Act (19 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). *(All contracts and subgrants for construction or repair.)*

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5. Compliance with the Davis-Bacon Act (40 USC 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
(Contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation.)
6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
(Contracts awarded by grantees and subgrantees in excess of \$2000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers.)
7. Notice of awarding agency requirements and regulations pertaining to reporting.
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data. The federal awarding agency reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal purposes: copyright in any work developed under a grant, subgrant or contract under a subgrant.
10. Access by the grantee, the subgrantee the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
12. Compliance with all applicable standards, orders or requirements issued under:
 - a. Section 306 of the Clean Air Act (42 USC 1857(h))
 - b. Section 508 of the Clean Water Act (33 USC 1368),
 - c. Executive Order 11738
 - d. Environmental Protection Agency regulations (40 CFR Part 15).

Prohibits entering into agreements or contracts with those convicted of certain statutory violations. Any entity shall be debarred from the receipt of all future federal funding based on a criminal conviction.

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13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

In addition, the following federal, government-wide requirements apply to all or most federal grantees and subgrantees, regardless of particular program requirements or the type of organization.

1. Title VI of the Civil Rights Act of 1964 (42 USC §2000(d); Pub. L. 88-352). For grantees and subgrantees also covered by Executive Order 11246 (See #3 above), the equal employment opportunity requirements meets the assurance requirement of Title VI. *Prohibits discrimination based on race, color, or national origin. The Department of Justice has issued Title VI regulations (28 CFR §42.1 Subpart C) as has the Federal Emergency Management Agency (44 CFR Part 7).*
2. Section 504 of the Rehabilitation Act (29 USC §794) applies to recipients of federal grants, loans, contracts (other than procurement) or other aid provided by a federal agency such as funds, services of federal personnel, real or personal property, or any interest in or use of property (DOJ 28 CFR §41.3), and specifically to grantees and subgrantees. *Prohibits discrimination in programs or activities, and mandates that all grantees and subgrantees review and modify their programs and activities so that individuals with disabilities are not precluded from participating in, receiving the benefits of, or being discriminated under those programs or activities.*

Americans with Disabilities Act of 1990 applies to grantees with 15 or more employees; states, their subdivisions and agencies regardless of size; and grantees that provide public accommodations of any kind. Extends the non-discrimination requirements of the Rehabilitation Act to programs, activities, and services that do not receive federal funds.

3. Age Discrimination Act of 1975 (42 USC §6101 *et. seq.*) applies to any entity receiving federal financial assistance such as grants, cooperative agreements or loans. Unlike Title VI of the Civil Rights Act, the Age Discrimination Act permits the use of some age distinctions and consideration of reasonable factors other than age that might have the appearance of age discrimination. *Prohibits exclusion of any person on the basis of age from participating in any program or activity, and no person can be denied the benefits of, or be subjected to discrimination under any such federally funded program or activity, on the basis of age.*
4. Freedom of Information Act (FOIA) (5 USC §552 *et. seq.*) provides any person with an enforceable right of access to federal agency records, except those that are protected from disclosure by a statutory exemption or special law enforcement exclusion. The US Supreme Court articulated that agency

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records are documents: (1) created or obtained by a federal agency; and (2) under agency control at the time of the FOIA request (492 US 136 (1989)). FOIA does not usually require the release of records created by or in the possession of federal grantees or subgrantees. However, these records may still be reached when they come under the federal grantor agency's control and thus be subject to release when a request is submitted to this agency.

5. OMB Circular A-87 Cost Principles for State and Local Governments refers to the implementation of the Byrd Amendment (31 USC §1352), which prohibits the use of federally appropriated funds to influence federal agency officials or members and employees of Congress in the awarding, extension, continuation, renewal, amendment, or modification of grants, loans, cooperative agreements and contracts. The common rule contains two appendices that affect grantees' actions.

OMB Circular A-122 Cost Principles for Nonprofit Organizations and OMB Circular A-21 Cost Principles for Educational Institutions specify that costs for certain lobbying activities are unallowable as charges to federal awards. Organizations can do so only with its own unrestricted funds.

(Applies to organizations receiving grants, subgrants, cooperative agreements, or contracts of more than \$100,000 or loans exceeding \$150,000. Requires certification that federally appropriated funds have not and will not be used for lobbying activities, and disclosure of persons involved in lobbying using non-federally appropriated funds.)

6. Drug-Free Workplace Act of 1988. Requires assurance of compliance that grantees, subgrantees and recipients of cooperative agreements maintain a drug-free workplace, establish a written policy that informs its employees that the unlawful possession, distribution or manufacturing of a controlled substance in the workplace is prohibited, and establish a drug-free awareness program.

Drug-free workplace requirements for federal contractors are contained in the Federal Acquisition Regulations (FAR).

7. Acknowledge federal funding when issuing statements, requests for proposals, bid solicitations, press releases and other documents describing projects or programs funded in whole or in part with federal grant dollars. Grantees and subgrantees are required to state:
 - a. Grant award number
 - b. Percentage and dollar amounts of the total program or project costs financed with federal funds
 - c. Percentage and dollar amount of the total costs financed by nongovernmental sources.

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8. Disclaimers when issuing statements, published materials, etc. that acknowledge the contents, opinions, findings, conclusions, or recommendations expressed in this material are those of the author and do not necessarily reflect the views of the grantor or the sponsoring federal agency.
9. Federal Acquisition Regulation (FAR) (48 CFR Parts 30 and 31)

State, Tribal and Local Governments must comply with these additional requirements, regardless of which federal agency provides funding.

Hatch Act (5 USC §1501 *et. seq.*) applies only to individuals employed by a state or local agency whose principal employment is in connection with an activity that is financed in whole or in part by loans or grants made by the US or a federal agency., and exercises functions in connection with that activity. An employee covered by the Hatch Act may not use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; directly or indirectly coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a political party or organization for a political purpose; or be a candidate for elective public office in a partisan election. Alaska requires civil service employees to resign from their jobs when they become a candidate for a partisan election, but not for a non-partisan election.

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PROCUREMENT

There are times when it may be necessary to procure goods and/or services in order to accomplish the goals of a program. For example, it may be necessary to purchase equipment or subcontract for services that the recipient does not have the required in-house expertise to perform.

Procurement Standards

General – A State shall follow the same policies and procedures it uses for procurement from its non-Federal funds. The State shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Subrecipients of States shall follow the procurement requirements imposed upon them by the States. Other recipients and subrecipients will follow the appropriate OMB Circular (OMB A-110 or OMB Circular A-102).

Standards – Recipients and subrecipients shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal law and standards identified in the Procurement Standards Sections of 28 CFR Parts 66 and 70. Any recipient/subrecipient whose procurement system has been certified by a Federal agency is not subject to prior approval requirements of 28 CFR Parts 66 and 70.

Adequate Competition – All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$100,000 must receive **prior** written approval from DHS&EM. Interagency agreements between units of government are excluded from this provision.

Non-competitive Practices – The recipient/subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to DHS&EM for prior approval.

Sole Source Procurement (Non-Competitive)

All non-state procurement transactions shall be conducted in such a manner that provides, to the maximum extent practical, open and free competition. However, should a recipient elect to award a contract without competition, sole source justification will be required. Justification must be provided for non-competitive procurement and should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. DHS&EM will approve sole-source procurements prior to award of procurement by recipient/subrecipient.

PROFESSIONAL SERVICES

The customary fixed fee or profit allowance in cost-type contracts may not exceed 10 percent of the total estimated costs. This is applicable to contracts under grants.

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Procurement Method Report

Attach to the Applicable Invoice

This report may be used to summarize methodology of procurement in lieu of writing a statement on the narrative report

Check appropriate boxes below:

Sole Source

All Sole Source procurements require DHS&EM's pre-approval and use of the Sole Source Checklist, Appendix E-3. DHS&EM's Sole Source approval documentation will be maintained in both the jurisdictional and DHS&EM grant files. There is no requirement to submit DHS&EM a copy of this pre-approval with the reimbursement request.

Procurements

- \$0-\$5,000 - Self-assurance and adequate competition must be documented for jurisdiction's grant files. There is no requirement to provide DHS&EM with this documentation. Appendix E-3, Negotiated Abstract, is provided as a method of documentation, any method of documentation may be used.

- \$5,000-\$25,000 - Certification Statement required for reimbursement (for each procurement):
 - Three written quotes were secured
 - Three verbal quotes were secured
 - A vendor from a General Services contract was secured
 - Three internet and/or catalog price comparisons were secured

- \$25,000-\$50,000 - Summary (Items required for each procurement):
 - Written quotation and quotes from at least three vendors
 1. Vendor's Name _____ Bid: _____
 2. Vendor's Name _____ Bid: _____
 3. Vendor's Name _____ Bid: _____
 4. Applicable Policy: _____
(Jurisdictional Statute, State's Procurement Statute, etc.)
 5. Provide a description of the vendor award/selection criteria:

 6. Why was the vendor chosen:

 - Sourcing from a General Services approved vendor lists
 1. Applicable Government Contract: _____
 2. Vendors Name: _____

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\$50,000 or Greater (Attach the following items for reimbursement)

- Invitation to Bid or Request for Proposal documents
- Published advertisement and/or solicitations
- List all submitted proposals/vendor and the bid amounts
- Vendor award/selection criteria
- Justification statement as to why vendor was chosen
- Contract award/Change Orders/Revisions/Amendments/etc.

\$100,000 or Greater: All steps in the procurement process will require DHS&EM's pre-approval. DHS&EM's approval documentation will be maintained in both the jurisdictional and DHS&EM grant files. There is no requirement to submit DHS&EM copies of these pre-approvals with the reimbursement request.

Mandatory pre-approval items are:

- Pre-Approval of the Invitation to Bid or Request for Proposal document
- Pre-Approval of the published advertisement and/or solicitation
- Pre-Approval of the vendor award/selection criteria
- Pre-Approval of the vendor selected
- Pre-Approval of the contract award

I certify the above information is true and accurate and documentation related to this procurement is on file and available upon request.

Project Manager's Signature

Date

Printed Name and Title

This report may be used to summarize the methodology of procurement in lieu of writing a statement on the narrative report

SOLE SOURCE CHECKLIST

**JUSTIFICATION TO AWARDING AGENCY FOR NON-COMPETITIVE
PROCUREMENT (SOLE SOURCE CONTRACTING)**

Note: This is NOT the same as a single vendor responding to a competitive solicitation.

- PARAGRAPH 1 – A BRIEF DESCRIPTION OF THE PROJECT AND WHAT IS BEING CONTRACTED FOR
- PARAGRAPH 2 – EXPLANATION OF WHY IT IS NECESSARY TO CONTRACT NON-COMPETITIVELY WITH THE SPECIFIED CONTRACTOR:
- EXPERTISE AND EXPERIENCE OF THE CONTRACTOR
 - MANAGEMENT CAPABILITY & INTEGRITY
 - RESPONSIVENESS
 - KNOWLEDGE OF THE PROJECT
 - PAST PERFORMANCE OF CONTRACTOR
 - RESULTS OF A MARKET SURVEY TO DETERMINE AVAILABILITY OF COMPETITION OR, IF ONE WAS NOT CONDUCTED, WHY NOT?
- PARAGRAPH 3 – TIME CONSTRAINTS:
- PROJECT TIMELINE
 - IMPACT ON PROJECT IF TIMELINE IS NOT MET
 - HOW LONG WOULD IT TAKE ANOTHER CONTRACTOR TO REACH THE SAME LEVEL OF COMPETENCE? (EQUATE TO DOLLARS IF DESIRED)
- PARAGRAPH 4 – UNIQUENESS OF PROJECT
(EXAMPLE: SINGLE VENDOR OR SOURCE)
- PARAGRAPH 5 – OTHER POINTS THAT SHOULD BE COVERED IN SUPPORT OF THE NONCOMPETITIVE PROCUREMENT
(EXAMPLE: PUBLIC EMERGENCY)
(FEDERAL AGENCY APPROVAL MAY BE REQUIRED IF PROJECT COSTS EXCEEDS THE SIMPLIFIED ACQUISITION OR SMALL PURCHASE THRESHOLD AMOUNT: \$100,000)
- PARAGRAPH 6 – A DECLARATION THAT THIS ACTION IS IN THE BEST INTERESTS OF THE AGENCY

Attachment B

NEGOTIATED ABSTRACT

COMMODITY CODE(S)	SHIPPING METHOD	FOB POINT	DATE DELIVERY REQUIRED	DELIVERY ORDER NUMBER
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VENDOR/CONTACT: ADDRESS: PHONE:	VENDOR/CONTACT INFORMATION			

DATE	QTY REQ.	UNIT	SPECIFICATIONS	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE

SUBTOTAL			
FREIGHT CHARGES			
TOTAL			

COMMENTS:

PREPARER'S NAME	PURCHASING AUTHORITY'S SIGNATURE	DATE OF AWARD	DIVISION
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