



# TDEC ARP Non-Competitive Grant Applicant Workshop

December 2022

# Meeting Agenda

Workshop Agenda
ARP Grant Program Update
Process Overview
Subrecipient Roles & Responsibilities
Risk Assessments
Project Procurement
Project Contracting
Project Reimbursement
Project Closeout Risk
Q&A

[\*Link to Appendix\*](#)



# Where We Are

- The Non-Competitive Grant (Collaborative and Non-Collaborative) Application Period closed on November 1, 2022
- TDEC is currently reviewing applications for award and subsequent contracting

Approximately  
**\$932 Million**

in funds were requested for a variety of water projects throughout the state of Tennessee

**339 Applications**

total for both collaborative and non-collaborative projects were submitted for non-competitive SWIG funds

# Grant Lifecycle Overview



- Application Submission
- Application Review
- Risk Assessment ★
- Application Award

- Terms and Conditions review

★ **Project Procurement**

- Planning and Administration
- Solicitation
- Evaluation
- Procurement Review\*
- Project Award

★ **Contracting**

- Project Execution
- Project Monitoring & Reporting

★ **Reimbursement**

★ *Focus of today's workshop*



*\*Projects that started on or before application approval will undergo a Procurement Review look back to ensure the procurement process, contract and contract terms align with the federal regulations.*

# Roles & Responsibilities

Subrecipient	Contractor(s)	TDEC
<ul style="list-style-type: none"><li>Receives sub-award from a pass-through entity (TDEC); carries out the grant program on their behalf</li></ul> <p><b>Responsibilities:</b></p> <ol style="list-style-type: none"><li>Execute the grant in compliance with the grant agreement</li><li>Monitoring the phases of the project lifecycle per the TDEC grant agreement Terms &amp; Conditions</li><li>Ensuring work performed (e.g., procurement, contracting, oversight, etc.) follows state, local, and federal regulations, including continual monitoring of contractor performance, financial management, etc.</li></ol>	<ul style="list-style-type: none"><li>An entity that receives a contract as defined in <u>2 CFR Parts 200.22 &amp; 200.23</u></li></ul> <p><b>Responsibilities:</b></p> <ol style="list-style-type: none"><li>Performs the work to be completed on the project (e.g., planning, engineering, construction, administrative costs, etc.)</li></ol>	<ul style="list-style-type: none"><li>Reviews and approves grant applications</li><li>Oversees the award of grant funds</li></ul> <p><b>Responsibilities:</b></p> <ol style="list-style-type: none"><li>Reviewing/approving submitted project applications</li><li>Providing technical support, execution of program objectives and funding requirements</li><li>Conducting routine subrecipient monitoring (e.g., reviewing invoices, receipts, site inspections, etc.)</li><li>Providing funding on a reimbursement basis (e.g., upon approval of eligible project expenditures)</li></ol>



# Risk Assessments

What is a risk assessment?

Risk assessments are evaluations of a subrecipient to determine potential gaps, missing controls, and processes and procedures **that may impact compliance with the grant.**

Informs TDEC of a subrecipient's existing controls, capacity, experience, or external variables that may impact the project execution of a grant program (e.g., WIIP)

**This evaluation is NOT an audit and will not be used to report non-compliance**

- The assessment is to understand if further technical assistance or resources should be provided to ensure compliance with the SWIG non-competitive program.

# Risk Assessment Importance



- **IT'S A REQUIREMENT OF 2 CFR PART 200 SUBPART D**
  - Evaluate the potential risk of subrecipient non-compliance
- **2 CFR Part 200.332(b)**
  - The pass-through entity (TDEC) is required to evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring
- **Ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward**



# Risk Assessment Process Overview



## Application Review

## Debarment Check

- Subrecipients
- Partner Entities

## Financial Management

- Single Audit
- Financial Statements
- Contract Audits

## Project Assessment

- Size & Complexity
- Partnerships
- Funding
- Experience

## Applicant Call

- Confirm Information
- Provide Clarification
- Project Understanding
- Resource Requirements
- Opportunity for Follow-Up

## What is being reviewed?

- **Sam.gov Debarment Review**
  - SAM.gov entity registration
  - Initially debarment reviews occur for subrecipients and their partners/collaborators, but SAM.gov checks are required of contractors during their procurement process
- **Past Single Audits (formerly called OMB Circular A-133 audit)**
  - History of adverse actions, observations, and material weaknesses
  - Specific to federally funded projects
  - History of grant programs indicates a level of knowledge for grant project execution

## What is being reviewed?

- **Past financial or contract audit reviews**
  - History of financial errors or material deficiencies
  - Generally specific to State-level reviews
- **Project application**
  - Specifics of work to be performed
  - Evaluates complexity of project and number of dedicated staff to implement and manage project
  - Number of partners or collaborative projects informs resource allocation



- **Procurement Essentials**
  - Guiding Principles for Procurement Process
  - Procurement Standards
  - Planning and Administration Processes
  - Top 10 Procurement Mistakes
- **Project Contracting**
  - Contracting Overview
  - Evaluations and Bid Selection
- **Procurement and Contracting Do's and Don'ts**



# Procurement Essentials

# Guiding Principles for Procurement Process



- **One of the most common reasons for federal de-obligations of funds is due to improper procurement**
- **When receiving federal funds, it's critical that you understand all policies (local, state, or federal), as the State and the subrecipient are required to follow the stricter policy standards**
- **Ensure fair and open competition**

- **Include standards of conduct for employees**
  - Be sure to prohibit conflicts of interest
- **Seek the best value while maintaining quality**
- **Ensure written contracts clearly state each party's responsibilities**
- **Retain all supporting documentation**
  - All supporting documents pertinent to a Federal award must be retained for a period of (3) years from grant closeout
- **Be consistent, keep good records**
- ***Failure to properly procure contracts related to this grant can impact a subrecipient's ability to request reimbursement or worse, result in reimbursement clawbacks long after the project has been completed***

## Procurement Standards (2 CFR Subpart D) can be broken down into the following categories:

- Procurement by states (2 CFR Part 200.317)
- **General procurement standards (2 CFR Part 200.318)**
- **Competition (2 CFR Part 200.319)**
- **Methods of procurement (2 CFR Part 200.320)**
- **Contracting with small and minority businesses, women's business enterprises (MWBE), and area labor surplus firms (2 CFR Part 200.321)**
- Domestic Preferences for Procurement (2 CFR Part 200.322)
- Procurement of Recovered Materials (2 CFR Part 200.323)
- **Contract Cost and Price (2 CFR Part 200.324)**
- Federal Awarding Agency or Pass-Through Entity Review (2 CFR Part 200.325)
- **Bonding Requirements (2 CFR Part 200.326)**
- **Contract Provisions (2 CFR Part 200.327 Appendix II)**



- **General Procurement Standards (2 CFR Part 200.318)**
  - Must use internal procurement written procedures
  - Maintain financial and performance oversight of contractors
  - Written procedures in place that avoid the acquisition of unnecessary or duplicative supplies or services
  - Maintain records detailing the history of the procurement (for each contract procured)
  - Maintain written standards of conduct covering conflicts of interest
- **Competition (2 CFR Part 200.319)**
  - Must allow for “full and open” competition
  - Must have documented selection procedures
  - Selection criteria must be posted in the bid material
  - Must identify all bidding requirements in bid materials

## Methods of procurement (2 CFR Part 200.320):

### Micro Purchases

- Less than \$10,000\*
- May be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable

### Small Purchases

- Greater than \$10,000 but less than \$50,000\*
- Price or rate quotations must be obtained from an “adequate number” of qualified sources

### Sealed Bids

- Greater than \$50,000\*
- Bids are publicly solicited, and a firm fixed price contract is awarded to the “responsible” bidder whose bid is the lowest in price

### Competitive Proposal

- Generally used when conditions are not appropriate for the use of sealed bids
- The appropriate method when more than one source is expected to submit an offer and either a fixed-price or cost-reimbursement type contract is awarded

### Noncompetitive Proposal

- Available only from a single source
- Emergency will not permit a delay resulting from competitive solicitation
- Accepted and included in the proposal
- If after solicitation of several sources competition is determined to be inadequate

- **Contract Cost and Price (2 CFR Part 200.324)\***
  - Price/cost analysis for each procurement above the TN small purchase threshold
  - Must use project cost estimates for evaluating bids or proposals
  - Must negotiate profit as a separate element of the contract
  - Time and materials contracts must contain a cap/threshold
- **Bonding Requirements (2 CFR Part 200.326)**
  - Construction or facility improvement projects above the Simplified Acquisition Threshold bonding requirements:
    - A bid guarantee from each bidder equivalent to 5% of the bid price
    - A performance and payment bond on the part of the contractor for 100% of the contract price
    - Must follow bonding requirements for construction or facility improvement projects beneath the Simplified Acquisition Threshold
- **Cost-plus-percentage-of-cost or cost-plus-percentage-of-construction-cost are not allowed**

# Procurement Standard: Contracting MWBE Firms



2 CFR Part 200.321: Must take all steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible

- To ensure consistent compliance with this requirement, applicants shall post project opportunities on the State's Governor's Office of Diversity Business Enterprise (Go-DBE) website. To post Request for Proposal/Request for Bid opportunities, you must:
  1. Visit: **Governor's Office of Diversity Business Enterprise (Go-DBE)**
  2. Follow the link to the Grant Website Posting Form
  3. Complete the form, selecting ARP as the type of grant
  4. Attached all relevant solicitation documents
- Grant information will post within 24-48 hours of receipt, except for State approved holidays and weekends.
- The minimum time frame to leave opportunities posted is 2 weeks (10 business days).

# Procurement Standard: Contract Provisions



## Contract Provisions (2 CFR Part 200.327 Appendix II)

Administrative, contractual, or legal remedies	• Contracts for more than the Simplified Acquisition Threshold
Termination for Cause and Convenience	• Contracts over \$10,000
Davis Bacon Act*	• All individual projects under contracts that utilize at least \$10,000,000 of ARP funding
Copeland "Anti-Kickback"	• Must be included in contracts subject to the Davis-Bacon Act
Contract Work Hours and Safety Standards Act	• Contracts awarded over \$100,000 involving the employment of mechanics or laborers
Clean Air Act and the Federal Water Pollution Control Act	• All contracts
Debarment and Suspension	• All contracts
Compliance with Federal Law, Regulations, and Executive Orders	• All contracts



*\*ARP legislation states that Davis-Bacon applies for contracts greater than \$10,000,000. The guidance also states that although you do not have a Davis-Bacon clause in contracts funded by ARP for less than \$10M, if you combine ARP funds with other federal funds on prime construction contracts above \$2,000, Davis-Bacon may be triggered if the rule is applicable for that source of funding.*

- **Document policies, procedures, and purchasing practices that comply with applicable laws, regulations, and contract terms and conditions**
  - Define the contractor evaluation criteria and methods for determining source selection
  - Mitigate against conflict of interest and mandatory disclosures
  - Ensure applicable flow-down clauses and terms and conditions are included in contracts
  - Define the lines of authority and responsibility within the system
  - Ensure procurements are based on authorized requisitions
  - Perform timely **cost/price analysis** and technical evaluations to determine whether cost/price is fair and reasonable
  - Maintain documentation details that outline complete and accurate history of the procurement to support method, contractor, the basis of award, and price reasonableness
  - Implement robust contractor monitoring and management of controls
  - Address adequate competition

- **Evaluate and enhance internal controls by examining:**
  - Established Policies and Procedures
  - Oversight plans
- **Maintain segregation of duties**
  - Designate staff who can only receive goods or make payment, not both
  - Implement a dual signature review to authorize payments
  - Ensure that only authorized individuals make binding contracts
- **Personnel Considerations**
  - Ensure personnel involved in procurement have appropriate training and experience
  - Ensure personnel maintain sound record keeping
  - Uphold ethics and prevent conflicts of interest

- **Procurement reviews are performed to ensure projects are administratively in compliance with ARP and Uniform Guidance**
- **The procurement review activity will take place in GMS**
- **GMS will give the subrecipient the ability to track the status of their procurement review and make notes when appropriate**
- **Procurement packages must be reviewed and approved before request for reimbursements can be submitted**



The GMS Procurement activity will include helpful resources and checklist to assist with the completion of federally compliant procurement packages.

Below are some key items that will be included for you to leverage:

- ❑ **The Implementation Guidelines** – A guide to assist subrecipients with grant management
- ❑ **Checklists** – Checklist that provides support to ensure all steps are completed
- ❑ **Listings of Required Documentation**
- ❑ **Supporting Templates** – Working templates that help subrecipients manage projects and request reimbursements
- ❑ **Workshop Presentation** – Presentation similar to this PowerPoint will be included in the resources tab for future reference

## Documents that subrecipient should prepare for GMS upload

Existing Procurement Policies

Names of evaluation team

RFP/RFB Package Issued

Evaluation and scoring records

Documentation regarding the posting of the RFP/RFB

Recommendation to award memo

Independent Cost Estimate

Contract with pricing information

Evaluation Criteria











Addenda/extensions issued and supporting cost estimates

Copies of responses to the RFP/RFB

Copies of correspondence with bidder

Other supporting documentation as applicable

# Top 10 Procurement Mistakes

-  Restricting **full & open** competition
-  Failing to perform **price or cost analysis** for procurements greater than SAT (\$50k)
-  Engaging in a **sole-sourcing** procurement without documenting emergency or exigent situation
-  Continuing work under a sole-source contract **after the emergency or exigent situation has ended**
-  Not making and documenting efforts to take **all affirmative steps**
-  Awarding a **time-and-materials** contract without a **ceiling price** and **not documenting why no other contract type is suitable**
-  Not including the **required contract clauses**
-  Awarding a **cost-plus-percentage-of-cost** or **percentage-of-construction-cost** contract
-  Awarding a contract to **contractors that are suspended or debarred**
-  Not documenting **all steps of a procurement** to answer questions that could arise months or years later

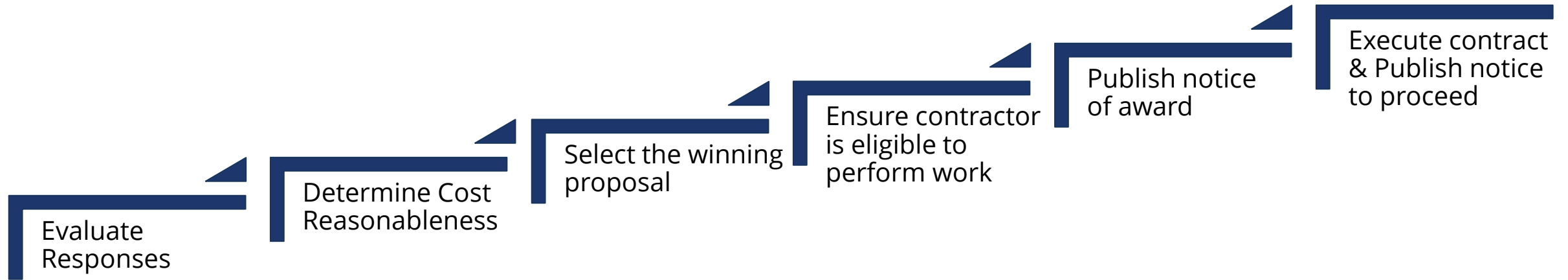




*Project  
Procurement  
& Contracting*

# Project Contracting

# Evaluating Bids & Selecting Contractors



- A committee should evaluate bids to ensure all requirements are met
  - A committee review mitigates the risk of conflicts of interest or selection bias
- Sealed Bids are opened publicly once the bid period has closed
  - Bidder names and prices are read out and recorded
- Must select the most advantageous proposal for the needs of the project
  - If the lowest cost proposal is not selected, the evaluation committee should justify the selection of that contractor and include documentation in the procurement file

- **Contracts may be fixed price contracts or time and materials contracts**
- **Bid response periods should be open for > 14 days**
- **The RFP should include a period for protest submissions and resolutions after the award notice is published, but before the execution of a contract**
- **Contract amendments, extensions, and change orders affecting prices or price ceilings must have an updated cost estimate performed**

# Procurement and Contracting Do and Don't



## DO

- ✓ Conduct procurements in a manner providing full and open competition
- ✓ Have written procedures for procurement transactions
- ✓ Ensure all pre-qualified vendor lists are current and include enough qualified sources
- ✓ Have a code of conduct with standards prohibiting employees involved in procurement from soliciting or accepting gifts
- ✓ Use one of the "methods of procurement" outlined in the regulations and comply with the applicable rules
- ✓ Use a procurement checklist to ensure all the components required have been met and are present in the procurement file
- ✓ Maintain sufficient records. Documentation is required to be retained for (3) years following award closeout.

## DON'T

- ⊘ Place unreasonable requirements on firms for them to qualify to do business
- ⊘ Require unnecessary experience and excessive bonding
- ⊘ Allow non-competitive pricing practices between firms or between affiliated companies
- ⊘ Use state, local, or tribal geographical preferences in the evaluation of bids or proposals
- ⊘ Approve non-competitive contracts to consultants that are on retainer contracts
- ⊘ Allow organizational conflicts of interest
- ⊘ Allow contractors that develop or draft specifications, requirements, statements of work, invitations for bid, or requests for proposals to compete for and be awarded the subsequent contract for that work
- ⊘ Specify 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



# Reimbursement



## What is Reimbursement?

- Repayment of an eligible cost that has been incurred for work completed on a project and determined to be reasonable and allowable with all supporting documentation provided

## When do reimbursement requests happen?

- Reimbursement requests can begin once certain criteria, as outlined in the grant terms and conditions, have been met
- Up to once per month after eligible costs have been incurred for work performed and documentation has been collected, reviewed and determined to be sufficient for the financial claim

## How are reimbursement requests initiated?

- Each subrecipient should submit a reimbursement request once a month
- Each reimbursement should include all approved projects across the grant
- The reimbursement request will be submitted within TDEC's Grants Management System (GMS)
- Costs must be broken down by project per the grant Terms & Conditions
- TDEC will work with the subrecipient to obtain any additional information required to justify the eligible costs

***Lack of required documentation and/or failure to properly procure contracts related to this grant can impact a subrecipient's ability to receive reimbursement in a timely manner or be denied altogether***

# Reimbursement Request Documentation



- Relevant reimbursement request documentation include:



- ***Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of (3) years from the date of submission of the final expenditure report***

# What's Next and How to Contact Us

- **Upcoming Dates to Remember and Workshops:**
  - Additional Non-Competitive Applicant Workshops – December 15 & 19
  - Non-Competitive Application Review Completion – January 2023
  - **In-person** Non-Competitive Awardee Workshops – February 2023
  - Non-Competitive Contract Approval Target Completion – February 2023
- **Implementation Guidelines**
  - An Implementation guideline will be provided and posted on TDEC's website to provide detail of how to implement programs and manage the grant program
- **Ongoing Inquiries** – Reach out to our team with specific questions related to procurement, eligibility and grant guidance at **TDEC.ARP@tn.gov**

**Thanks For Your Time**

**Questions?**



## 2 CFR 200 Resources

### Parts 200.317-327 Procurement Standards

- 2 CFR 200.317 Procurement by States
- 2 CFR 200.318 General Procurement Standards
- 2 CFR 200.319 Competition
- 2 CFR 200.320 Methods of Procurement to be Followed
- 2 CFR 200.321 Contracting with Small & MWBE Businesses
- 2 CFR 200.322 Domestic Preferences for Procurement
- 2 CFR 200.323 Recovered Materials
- 2 CFR 200.324 Contract Cost and Price
- 2 CFR 200.325 Review of Procurement
- 2 CFR 200.326 Bonding Requirements
- 2 CFR 200.327 Contract Provisions

# Key Procurement Definitions



- **MWBE:** Efforts to engage MWBE contractors must be taken and must be included in any public posting
- **Independent Cost Estimate:** Subrecipients should prepare a cost estimate of what they think the goods/services will cost before receiving bids to be able to assess the reasonableness of the proposals received
- **Evaluation Criteria:** Subrecipients must have a formal set of criteria in place to systematically score the proposals received
- **Debarment check (SAM.gov):** A debarment check of the selected contractor must be performed
- **Contract with pricing information:** The agreement between the vendor and the subrecipient
- **Addenda & Extensions:** Amended or extended RFP/RFBs should be properly communicated to potential bidders. This is often done by publishing an addendum to the RFP/RFP, which is part of the procurement package

- Cost reasonableness must be supported per 2 CFR Part 200.324
- Demonstrating cost reasonableness is required and can be accomplished by comparing the ***application project cost estimate*** against ***bids received***
  - This provides an "apples-to-apples" comparison of the work required and ensures cost reasonableness
- **Analyses of bid proposals can be done using either Cost or Price Analysis**
  - Bids or proposals can be evaluated for cost reasonableness using either a cost or price analysis
  - The scope of the contract should determine whether to use a cost or price analysis (e.g., Professional Services vs. Equipment & Construction)
  - Bids or proposals costs within 15% of the estimate are considered cost reasonable and may move forward to award



# When to Use Cost Analysis vs. Price Analysis

	Cost Analysis	Price Analysis
<b>Items Purchased</b>	<ul style="list-style-type: none"> <li>Professional Services</li> <li>Labor &amp; Materials</li> </ul>	<ul style="list-style-type: none"> <li>Supplies</li> <li>Equipment &amp; Construction</li> </ul>
<b>Procurement Type</b>	<ul style="list-style-type: none"> <li>RFP/RFB</li> <li>Non-Competitive</li> </ul>	<ul style="list-style-type: none"> <li>Sealed Bid</li> <li>Micro Purchase</li> <li>Small Purchase</li> </ul>
<b>Standard for Estimates</b>	<ul style="list-style-type: none"> <li>Prior proposals/bids</li> <li>Prior purchases</li> <li>Estimating software</li> <li>Federal Rates</li> </ul>	<ul style="list-style-type: none"> <li>Published Prices</li> <li>Price set by law</li> <li>Federal Rate</li> <li>Prior proposals/purchases</li> </ul>
<b>Evaluation</b>	<ul style="list-style-type: none"> <li>Line items are reviewed against estimates, market rate, &amp; other provided quotes</li> </ul>	<ul style="list-style-type: none"> <li>Total quote price compared to estimate, market rate, &amp; other quotes</li> </ul>

- **All contracts must be awarded to qualified, responsible contractors**
  - Responsiveness refers to the bidder's compliance with *all* required specifications in the formal solicitation, inclusive of any addenda
    - **Note:** Any bidders listed on the *SAM Excluded Party List* will be deemed non-responsive and automatically excluded from consideration for an award for any federally funded assistance programs
- **Verify contractor and vendor eligibility**
  - Visit the government website System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov)
  - Confirm the contractor holds the proper licensure and insurance
    - **Note:** It is in the best interest of the awarding entity to perform a search of SAM.gov of any potential bidders before awarding the contract to avoid the potential for costly clawbacks related to contracting with a federally debarred vendor

- **Contracts must contain language ensuring the general contractor is responsible for checking the debarment of their subcontractors**
  - A list of subcontractors must be included in the procurement file
- **Bonds are typically for public works or construction projects and may not be required for goods or non-professional services**
  - Performance and payment bonds for 100% of the contract price
  - Contract must include the requirement for maintaining the insurance certificates in the amount required in the bid documents
- **Insurance certificates are required as a part of the procurement file**

# Relevant Administrative Document Definitions



<b>Existing Procurement Policies</b>	Procurement already has in place for conducting its procurements of goods and services under normal and/or emergency circumstances
<b>RFP/RFB Package Issued</b>	Request for Proposal (RFP)/Request for Bid (RFB) and associated documents; when an entity needs to procure goods/services, an RFP/RFB solicits the goods/services
<b>Documentation regarding the posting of the RFP/RFB</b>	For the procurement to be fair and open, the RFP/RFB must be made available to an adequate number of bidders. (e.g., post the RFP/RFB on the agency's website or in a newspaper)
<b>Independent Cost Estimate</b>	Subrecipients should prepare a cost estimate of the costs of goods/services before they receive the bids from the vendors to be able to assess the reasonableness of the proposals received
<b>Evaluation Criteria</b>	Subrecipients must have a formal set of criteria in place to systematically score proposals received
<b>Copies of responses to the RFP/RFB</b>	It is helpful to see all the proposals submitted by the respondent vendors
<b>Contract with pricing information</b>	The contract between the vendor and the subrecipient
<b>Addenda/extensions issued</b>	When RFP/RFBs are adjusted or additional information provided to potential bidders, addendums are often required to be posted/issued
<b>Copies of correspondence with bidder</b>	Copies the subrecipient's communication with the bidders, i.e., Q&As, any communication regarding pricing and terms, and any best and final offers (BAFO) requested