

SS4A Procurement Standards Under 2 CFR Part 200



Frequently Asked Questions

Q: What are the different types of procurement methods for construction projects and architectural and engineering (A/E) services?

A: There are generally two types of procurement methods for a construction project: sealed bids and Request for Proposals (RFPs). The sealed bid procurement method is where bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation for bids and is the lowest in price ([2 CFR § 200.320\(b\)\(1\)](#)). The sealed bids method is the preferred procurement method for construction projects using the design/bid/build delivery method. The sealed bids method tends to be a firm fixed price contract (see [2 CFR § 200.320\(b\)\(1\)\(i\)\(C\)](#)).

RFPs are generally used when conditions are not appropriate for the use of sealed bids ([2 CFR § 200.320\(b\)\(2\)](#)). RFPs select the successful bidder based on initial selection factors such as qualifications, experiences, and price. Price must be part of the initial selection factor ([2 CFR § 200.320\(b\)\(2\)\(iii\)](#)). RFPs can be used for design-build, Construction Manager/General Contractor, and Construction Manager at Risk delivery methods on construction projects. RFPs also can be used for project inspection and material testing services. Under this method, contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors ([2 CFR § 200.320\(b\)\(2\)\(iii\)](#)). For the RFP method, the contract type may be a firm fixed contract or cost reimbursement contract, such as time and materials ([2 CFR § 200.320\(b\)\(2\)](#)).

For all construction procurement methods, the solicitation/invitation for bids must incorporate a clear and accurate description of technical requirements for the services so that the bidder can properly respond to it ([2 CFR 200.319\(d\)\(2\)](#), [2 CFR 200.320\(a\)\(2\)\(ii\)](#), and [2 CFR 200.320\(b\)\(2\)\(i\)](#)).

The type of procurement method for A/E services is a Request for Qualifications (RFQs) which is only for A/E professional services where price is not used as part of the initial selection factor ([2 CFR § 200.320\(b\)\(2\)\(iv\)](#)). The selection criteria factors are based on the A/E firm's qualification. The grant recipient or subrecipient then selects the most qualified offeror based on selection factors and negotiates fair and reasonable compensation ([2 CFR § 200.320\(b\)\(2\)\(iv\)](#)). Qualifications-based procurement cannot be used to purchase other services provided by A/E firms ([2 CFR § 200.320\(b\)\(2\)\(iv\)](#)).

According to [2 CFR 200.317](#), Indian Tribes (and States, which are not eligible applicants) must follow the same policies and procedures they use for procurements with non-Federal funds. If such policies and procedures do not exist, Indian Tribes (and States) must follow the procurement standards in [2 CFR 200.318 through 200.327](#), which would include the procurement methods noted above. In addition, subrecipients of Tribes must follow the procurement standards in [§ 200.318 through 200.327](#).

Q: What is the solicitation requirement when using contractors?

A: [2 CFR § 200.319\(a\)](#) states that all procurement “must be conducted in a manner that provides full and open competition and is consistent with the standards of [[2 CFR § 200.319](#) and [2 CFR § 200.320](#)].” As part of the full and open competition, grant recipients and subrecipients will need to ensure that that all prequalified lists are current and include enough qualified sources to ensure maximum open competition ([2 CFR § 200.319\(e\)](#)).

Under [2 CFR § 200.319\(d\)\(2\)](#), the recipient and subrecipient must ensure that all solicitations have “a clear and accurate description of the technical requirements for the property, equipment, or service being procured”. In the highway construction context, this would generally mean that the invitation for bids would have the technical requirements necessary for the contractor to understand the scope of work and develop a bid for the project. The procedures must also ensure that all solicitations identify all the requirements that bidders must fulfill and all other factors that will be used in evaluating bids or proposals ([2 CFR § 200.319\(d\)\(2\)](#) and [2 CFR § 200.319\(d\)\(3\)](#)). The invitation for bids should also provide a clear method of award ([2 CFR § 200.320\(b\)\(1\)](#) and [2 CFR § 200.320\(b\)\(2\)\(i\)](#)).

Q: Can consultants who assisted grant recipients with the grant application also apply and be considered eligible to participate in the open solicitation for the Action Plan? If a grant recipient already has an on-call contract with an engineer, can they use the procurement documentation for when the contract with the engineer was issued to meet the procurement requirement?

A: If the consultant and/or on-call contract engineer is going to perform the grant’s scope of work, the grant recipient must adhere to the competition requirements at [2 CFR § 200.319\(a\)](#), [2 CFR § 200.319\(b\)](#) and [2 CFR § 200.320\(b\)](#), procurement requirements at [2 CFR § 200.318 through 2 CFR § 200.327](#), and cost principles in [2 CFR Part 200, subpart E](#). For further information about procurement guidelines, review [2 CFR Part 200, subpart D](#).

Q: Are recipients and subrecipients required to use a certain number of small businesses, minority businesses, veteran-owned businesses, and women's business enterprises for SS4A grants?

A: There is no required percentage in 2 CFR Part 200 for these types of businesses. However, according to [2 CFR § 200.321](#), when possible, the recipient or subrecipient "should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered as set forth" in [2 CFR § 200.321\(b\)](#). [2 CFR § 200.321\(b\)](#) describes six considerations. Some examples of applying the considerations to a project are: including these business types to the solicitation lists for A/E services or construction projects; using services and assistance from the Small Business Administration and Department of Commerce's Minority Business Development Agency; or requiring a contractor under the award to apply [2 C.F.R. 200.321](#) to subcontracts.

Q: How is procurement with nonprofit organizations governed?

A: Nonprofit organizations are not eligible to be the recipient of an SS4A award. However, they may partner with recipients for some portions of the work. The recipient is responsible for making case-by-case determinations to determine whether the entity receiving SS4A funds is a subrecipient receiving a subaward or a contractor receiving a contract. The recipient must use judgment in classifying each agreement as a subaward or a procurement contract. In making this determination, the substance of the relationship is more important than the form of the agreement. Please see [2 CFR § 200.331](#) for more information on how to make a determination between a subrecipient and contractor.

Q: What trainings are available for grant recipients to learn more about procurement and debarments at the Federal level?

A: Trainings are available on the System for Award Management (SAM) website here: <https://sam.gov/content/help>

The National Highway Institute also has courses on 2 CFR 200 here: [National Highway Institute : Search for Courses \(dot.gov\)](#).

There may be other private vendors that can provide training on Procurement and Debarments under 2 CFR Part 200. FHWA is not able to provide a private vendor list that provides these types of training.

Q: Is the recording of the webinar and a presentation available to the public?

A: A recording of the webinar along with the presentation slides are available on the [SS4A Clearinghouse website](#).

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