

PROCUREMENT POLICY

Approved by Administrative Council 6/25/18

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INTRODUCTION

This policy and related procedures are developed in accordance with the federal guidelines in OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200 Subpart D). These policies may change as the uniform guidance is updated. Roseman will review periodically and revise this policy as needed to be in compliance with applicable guidelines.

PURPOSE

The purpose of this policy is to ensure responsible expenditure of University funds. Roseman University of Health Sciences utilizes a decentralized purchasing process. This policy establishes standards and guidelines for the procurement of supplies, equipment, construction and services to ensure that they are obtained as economically as possible through an open and competitive process and that contracts are managed with good administrative practices and sound business judgement.

This policy applies to all procurement actions at Roseman University, including procurement of property and services under any extramurally-funded (both Federal and non-Federal) grants, awards, contracts and sponsored projects.

RESPONSIBILITIES

Buyers have the responsibility of utilizing University resources in an ethical and lawful manner. Any Roseman employee with purchasing responsibilities for their unit or a federal award should refer to this policy to ensure compliance.

Any questions regarding purchasing with Roseman funds should be directed to the Purchasing Coordinator. Questions regarding purchasing with federal or sponsored funds should be directed to the Grants Administrator.

I. GENERAL PROCUREMENT STANDARDS

The University is required to document the procurement steps and activities required for operations. This includes what type of purchasing method is used, contract type, price and the basis for contractor selection. A purchase order may be used as appropriate documentation. The Business Office is responsible for keeping all contract records (See section I.B. "Record of Procurement History").

Each Unit Heads has authority over the approved budget for his/her respective unit. If a Unit Head is unavailable to approve budgeted expenditures, he/she may delegate another person

as Approver during his/her absence. This Delegation of Authority must be on file with Business Services.

Two signatures from authorized officers are required to obligate any University funds to a contract.

Roseman University's Business Office maintains the written procurement policies and procedures for the University which comply with all applicable state, local, tribal and federal laws, and regulations, including those identified in 2 CFR §200. Reviews are conducted periodically to maintain oversight and ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts.

Roseman employees with procurement responsibilities must avoid purchasing 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 by the Business Office of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

A. Vendor Selection and Competition

Buyers are encouraged to focus on the most valuable solution during the purchasing process. To avoid loss of productivity, sometimes the lower cost is not the most efficient selection, so good management and best judgement are required for proper stewardship of University funds. Look for shared services or ask about purchasing consortiums to foster greater economy and efficiency.

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, Roseman will participate in state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

Roseman employees with procurement responsibilities are 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.

B. Record of Procurement History

The Business Office will 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 type, contractor selection or rejection, and the basis for the contract price. All University Agreements, Contracts, Leases and Grants are kept on file in the Business Office. Electronic copies suffice this policy. Procurement history records must be retained for a period of three years from: i) project completion in the case of projects funded from university sources; or (ii) from the date of submission of the final expenditure report for extramurally-funded (both Federal and non-Federal) projects; or (iii) in the case of

Federal or non-federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report.

C. Disclosure of Conflicts of Interest/Code of Ethics

Roseman University maintains a Conflict of Interest/Code of Ethics policy. (See University Handbook). In addition, all Roseman employees, including those participating in sponsored projects must adhere to the following:

- No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal or non-federal award if he or she has a real or apparent conflict of interest;
- Employees, officers, or agents of Roseman must disclose real or apparent conflicts of interest when involved in the recommendation or authorization of purchases classified as “Small Purchases” or “Large Purchases” (See Section I.D., “Purchase Classifications”).
- Conflicts of interest must be disclosed using the Conflict of Interest Disclosure Form).
- All unit heads or other employees empowered to authorize purchases are required to complete the Conflict of Interest Disclosure Form on July 1 annually.
- Any employee participating in a sponsored project must complete the Conflict of Interest Disclosure Form and submit it along with the grant or project proposal to the Grants Officer as part of the internal grants approval process for both Federal and non-federal grants, contracts, and awards.

Officers, employees, and agents of Roseman University must neither solicit nor accept gratuities, favors, or anything of monetary value over \$75 from contractors or parties to subcontracts. If a conflict becomes known to an employee it must be disclosed to his/her supervisor using the Conflict of Interest Disclosure Form.

D. Purchase Classifications

Micro-Purchase

Purchase of supplies or services for which the aggregate purchase amount (including shipping and handling) does not exceed \$10,000 or \$2,000 for construction subject to the Davis-Bacon Act, are classified as “Micro-Purchases”.

Small Purchase

Purchases of services, supplies, or other property for which the aggregate purchase amount does not exceed the Simplified Acquisition Threshold as set by the Federal Government (currently \$250,000) are classified as “Small Purchases”.

Large Purchase

Purchases which exceed the Simplified Acquisition Threshold (currently \$250,000) are classified as “Large Purchases”.

E. Procurement Procedures

Micro-Purchases

Micro-purchases may be awarded without soliciting competitive quotations if the purchaser considers the price to be reasonable. Verification of price reasonableness is required if:

- The purchaser suspects or has information to indicate that the price may not be reasonable (e.g., comparison to the previous price paid or personal knowledge of the supply or service); or,
- Purchasing a supply or services for which no comparable pricing information is readily available (e.g., a supply or service that is not the same as, or is not similar to, or other supplies or services that have recently been purchased on a competitive basis.

Micro purchases may be made using a P card.

For Federal grant, award, or contract purchases, and to the extent practicable, Roseman must distribute micro-purchases equitably among qualified suppliers.

Small Purchases

For all small purchases, written price or rate quotations must be obtained from at least two, but preferably three qualified sources unless the provisions outlined in the section entitled “Sole Source Procurement” are met.

Purchase orders are recommended for all small purchases.

For small purchases, using Federal funds, the System for Award Management (SAM) at SAM.gov should be checked to ensure that the vendor or service provider does not appear on the excluded parties list.

Large Purchases

For all large purchases, written price or rate quotations must be obtained from at least three sources unless the provisions for a sole source procurement outlined in section 1.B.iii are met.

Purchase orders are required for all large purchases.

1. Additional requirements for Large Purchases funded through Federal and non-federal grants, contracts, and awards.

A. Competition

All procurement transactions must be conducted in a manner providing full and open competition. When selecting vendors, the buyer should 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. In order to ensure objectivity and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Roseman University must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

B. Solicitation of Proposals

There are three methods of soliciting proposals for externally funded large purchases: i) sealed bids; (ii) competitive proposal; or (iii) noncompetitive proposals. Typically, the sealed bid process is preferred. If conditions are not appropriate for sealed bids, then the competitive proposal is used. For circumstances in which procurement from a sole source is justified,

noncompetitive proposals are allowed, provided the procedures outlined in section 1.B.iii are followed.

i) Sealed Bid Process

The sealed bid process method is the preferred method for procuring construction. Bids are publicly solicited and a firm fixed-price contract (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 the price.

In order for sealed bidding to be feasible, the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, 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;
- 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;
- 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;
- A firm fixed price contract 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
- Any or all bids may be rejected if there is a sound documented reason.

All solicitations must:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not 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.

- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- Roseman University must ensure that all prequalified list 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, Roseman University must not preclude potential bidders from qualifying during the solicitation period.

ii) Competitive proposal process

Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative important. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- Proposals must be solicited from at least 3 qualified sources. This serves as the basis for vendor selection;
- Roseman must have a written method for conducting technical evaluations of the proposals received and for selecting recipients which will be determined by an internal oversight committee formed when a Federal award is granted with this type of project; and,

- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors consistent; and Roseman may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and most qualified competitor 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 are potential source to perform the proposed effort.

iii) Noncompetitive Proposals—Sole Source Procurement process

Noncompetitive proposals are procurements are those obtained through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from Roseman; or,
- After solicitation of a number of sources, competition is determined inadequate. If this method of procurement is used, a Sole Source Justification form is required.

II. ADDITIONAL CONSIDERATIONS FOR FEDERAL AWARD PROCUREMENTS

A. Federal Award Procurement Standards

The following sections apply to procurements under a federal award. Although not required, they are considered best practice for general procurement.

Contract Administration

Any contracts with Federal funds must contain the applicable provisions described in Appendix II to Part 200.

Contract Cost and Price Analysis

The Business Office will perform a cost or price analysis for procurements over the simplified acquisition threshold. The method and degree of analysis is dependent on the facts surrounding each particular situation, but as a starting point, the requestor must make independent estimates before receiving bids or proposals.

The requestor 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, and 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.

Roseman may reference its own cost principles that comply with the Federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used for Federal awards.

Contract Provisions

Oversight: Roseman University must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts. Roseman alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements, including, but not limited to, source evaluation, protests, disputes and claims. The standards do not relieve the University of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of Roseman University unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

Contract Types

- Roseman University will use value engineering clauses in contracts for federally funded construction projects of sufficient size to offer reasonable opportunities for cost reductions.

- Roseman University may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. A time-and-materials contract provides no positive proof incentive to the contractor for cost control or labor efficiency, therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, if Roseman were to award such a contract it must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Contractor Evaluation

Roseman University must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matter as a contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The responsible buyer must ensure the contractor is not on the federal Suspension and debarment list per CFR §200.213.

Roseman University should not show state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference, or when contracting for architectural and engineering (A/E) services, provided it leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. This does not preempt state licensing laws.

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 Roseman University provided that the Federal awarding agency or pass-through entity has made the 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 obligations 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.

Federal awarding agency or pass-through entity review

Roseman University must make available, upon request from any Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity 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 Roseman desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

Roseman University must make available, upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- Roseman University's procurement procedures or operation fails to comply with the procurement standards in this part;
- The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or other is received in response to a solicitation;
- The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product.
- The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- Roseman University is exempt from the pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

Vendor Selection and Competition

Buyers are encouraged to focus on the most valuable solution during the purchasing process. To avoid loss of productivity, sometimes the lowest cost is not the most efficient selection, so good management and best judgement are required for proper stewardship of University funds. Look for shared services or ask about purchasing consortiums to foster greater economy and efficiency.

All procurement transactions must be conducted in a manner providing full and open competition. Roseman University must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- 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;
- Establishing delivery schedules, where the requirements permits, which encourage participation by small and minority businesses, and women's business enterprises;
- 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
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

B. Federal Award Procurement Procedures

Roseman must not use any vendor or contractor that restricts competition. Some of the situations to avoid that are restrictive to competition but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- 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
- Any arbitrary action in the procurement process.

Appendix I

Definitions for Federal Awards

Cost Principles: establishes standards for the allow ability of costs, provide detailed guidance on the cost accounting treatment of costs as direct or indirect costs, and sets forth allow ability and allocability principles for selection items of cost.

Equipment: tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost of \$5,000, or as otherwise established by the Roseman University for financial statement purposes.

Micro-purchase: a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$10,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

Principal Investigator – PI: An investigator (normally an academic appointee) who has primary responsibility for the scientific and technical conduct, reporting, fiscal and programmatic administration of a sponsored project.

Sole Source Procurement: Procurement by non-competitive proposals is procurement through solicitation of a proposal from only one source (sole source) and may be used only when one or more of the following circumstances apply:

- 1) The item is available only from a single source;
- 2) The public exigency or requirement will not permit a delay resulting from competitive solicitation;
- 3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- 4) After solicitation of a number of sources, competition is determined inadequate.

Simplified acquisition threshold: the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 19098. As of the publication of this part, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation.

Time and material type contract: a contract whose cost to Roseman is the sum of:

- Actual cost of materials; and

- Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Total Purchase Price: cost of product or service, including shipping, handling and installation.

Value Engineering: a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

Appendix II

Contract Provisions for Federal Awards

In addition to any other provisions required by Roseman, all contracts entered into under a Federal award must contain provisions covering the following, as applicable:

(A) Contracts for more than the simplified acquisition threshold (currently set at \$250,000) which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by U.S.C. 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 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, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p.339) as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). 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 (40 U.S.C. 3141-3144, and 3146-3148) as supplemented Department of Labor regulations (29 CFR 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 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), as supplemented by Department of Labor regulations (29 CFR 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 sub recipient 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 (40 U.S.C. 3701-3708). 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 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic or 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 basis rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 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 (a) and the recipient or sub recipient 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 the “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR 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 (42 U.S.C. 7401-7671 .) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended – Contracts and sub grants of amounts in excess of \$250,000 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 (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and practices relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549-12689) – a contract award (see 2. CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 126899 (3 CFR Part 1989 Comp.,p.235), “Disbarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties disbarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd-Anti-Lobbying Amendment (31 U.S.C. 1352) – Contractors that apply or bid for an award of \$100,000 or more 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. 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.

(K) See §200.322 Procurement of recovered materials.