Welcome! We'll begin soon.

Meeting Administration

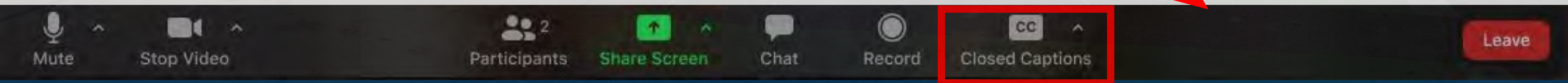
Participants enter the meeting on mute

To ask a question, use the Q&A function

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S|S
4|A

SS4A Community of Practice

April 3, 2024

U.S. Department of Transportation
Federal Highway Administration

ZERO IS OUR GOAL
A SAFE SYSTEM IS HOW WE GET THERE



Disclaimer

Except for any statutes and regulations cited, the contents of this presentation do not have the force and effect of law and are not meant to bind grant recipients in any way.

This presentation is intended only to provide information and clarity on existing requirements under the law or agency policies.

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Welcome, New SS4A Grant Community Members!

511 2022 Grants + **620** 2023 Grants = **1131** Total Grant Awards *As of 12/15/23*

1046 Planning and Demonstration Grants

85 Implementation Grants

Today's Speakers

Host



Meg Miller
Transportation Specialist
Office of Safety, FHWA

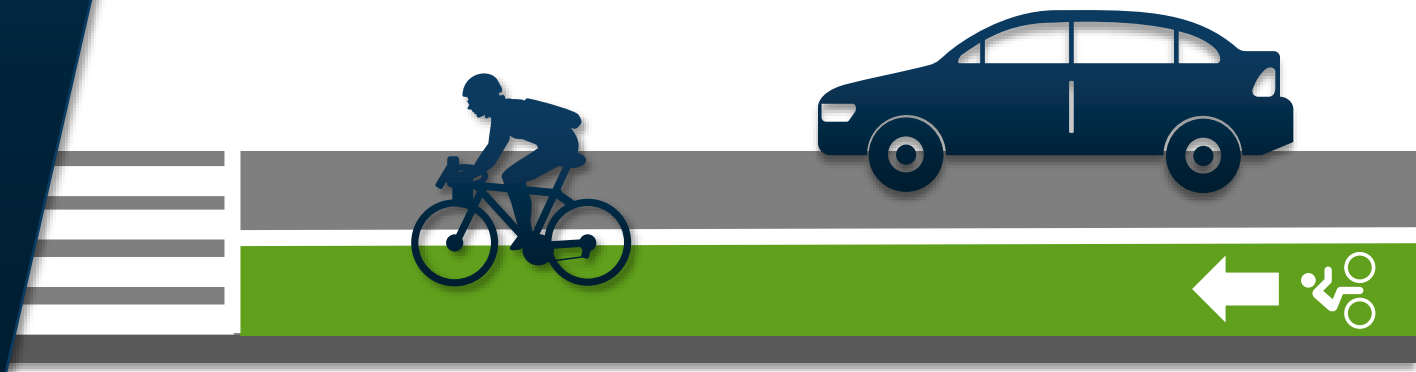
Guest Speaker



Veronica Jacobson, P.E.
Grants Management Specialist,
Office of Acquisition and Grants Management, FHWA

Today's Agenda

1. Welcome
2. Community of Practice Updates
3. Overview of Procurement Standard in 2 CFR Part 200 Subpart D
4. Next Steps and Q&A







Welcome



SS4A CoP Updates

Clearinghouse Website

What: Provides a resource library and other technical assistance resources, including CoP meeting materials.

Technical Assistance

What: One-on-one support for grant recipient questions on grants administration or project execution. (e.g., Action Plan development)

Peer Exchange

What: Facilitated discussions, held on a quarterly basis, for small groups on specific topics or grant recipient demographics.





Overview of Procurement Standard in 2 CFR Part 200 Subpart D



2 CFR 200 Procurement Standards Subpart D

Grant recipients must follow the requirements listed in 2 CFR § 200 Subpart D, including the Procurement standards in 2 CFR 200.317 through 2 CFR 200.327

- Procurement Standards 200.317 - 200 327
  - § 200.37 7 Procurements by states.
  - § 200.318 General procurement standards.
  - § 200.319 Competition.
  - § 200.320 Methods of procurement to be followed
  - § 200.321 Contracting with small and minority businesses, women's business enterprises/ and labor surplus area firms.
  - § 200.322 Domestic preferences for procurements.
  - § 200.323 Procurement of recovered materials_
  - § 200.324 Contract cost and price.
  - § 200.325 Federal awarding agency or pass-through entity review.
  - § 200.326 Bonding requirements.
  - § 200.327 Contract provisions.

Review
2 CFR § 200 Subpart D

Sections to review before beginning the procurement process

§ 200.318 General procurement standards

§ 200.319 Competition

§ 200.320 Methods of procurement to be followed

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

§ 200.322 Domestic preferences for procurement

§ 200.324 Contract cost and price

§ 200.327 Contract provisions

General Procurement Standards - 2 CFR § 200.318



§ 200.318(a)

Written procurement procedures consistent with State, local, and tribal laws, regulations, and standards. Procedures must conform to 2 CFR 200.317 to 200.327 procurement standards.

§ 200.318(b)

Maintain contract oversight to ensure that contractors comply with their contracts or purchase orders.

§ 200.318(c)

Written standards of conduct covering conflicts of interest (including organizational conflicts of interest) and governing the actions of its employees engaged in the selection, award, and administration of contracts.

§ 200.318(g)

For construction contracts, consider using value engineering clauses for projects.

General Procurement Standards - 2 CFR § 200.318

§ 200.318(h)

Award contracts to responsible contractors possessing the ability to perform successfully, considering factors such as integrity, compliance with public policy, past performance, and financial and technical resources. Not awarding to any contractor that is suspended or debarred.

§ 200.318(i)

Maintain records that detail the history of the procurement

- Rationale for the method of procurement,
- Selection of contract type
- Contractor selection or rejection
- Basis for the contract price.

§ 200.318(j)

Use a time-and-material contract type (actual cost of materials and direct labor hours, profit and overhead costs) only if no other contract type is suitable. Not to exceed amount.

§ 200.318(k)

Responsible for settling all contractual and administrative procurement issues.

Competition - 2 CFR § 200.319

Must be conducted in a manner providing full and open competition - 2 CFR § 200.319 (a) & (e)

- Ensure all prequalified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources
- Not preclude potential bidders from qualifying during the solicitation period

2 CFR § 200.319 (f) Noncompetitive procurements can on y be awarded in accordance with § 200.320(c).

Must have written procedures - 2 CFR § 200.319 (d)

Have written procedures for procurement transactions to ensure all solicitations:

- Incorporate a clear and accurate description of the technical requirements need to be met
- Identify all requirements the offerors must fulfill and the factors that will be used to evaluate bids or proposals

Must avoid geographic location preference or criterion - 2 CFR § 200.319 (c)

Conduct procurement without using geographic preference in the evaluation of bids or proposals except

- In cases where applicable Federal statutes expressly mandate or encourage geographic preference
- For architectural and engineering services, but only if using the geographic location criterion leaves an appropriate number of qualified firms to compete for the contract

Competition - 2 CFR § 200.319(b)

- **Eliminate unfair competitive advantage** – Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.
- **Eliminate restrictive competition** – Here are example situations that restrict competition:

Unreasonable Requirements

Placing unreasonable requirements on firms for them to qualify to do business

Bonding

Requiring unnecessary experience and excessive bonding

Noncompetitive Pricing

Noncompetitive pricing practices between firms or between affiliated companies

Brand Name

Specifying only a "brand name" product instead of allowing "an equal" product

Noncompetitive Contracts

Noncompetitive contracts to consultants that are on retainer contracts

Conflict of Interest

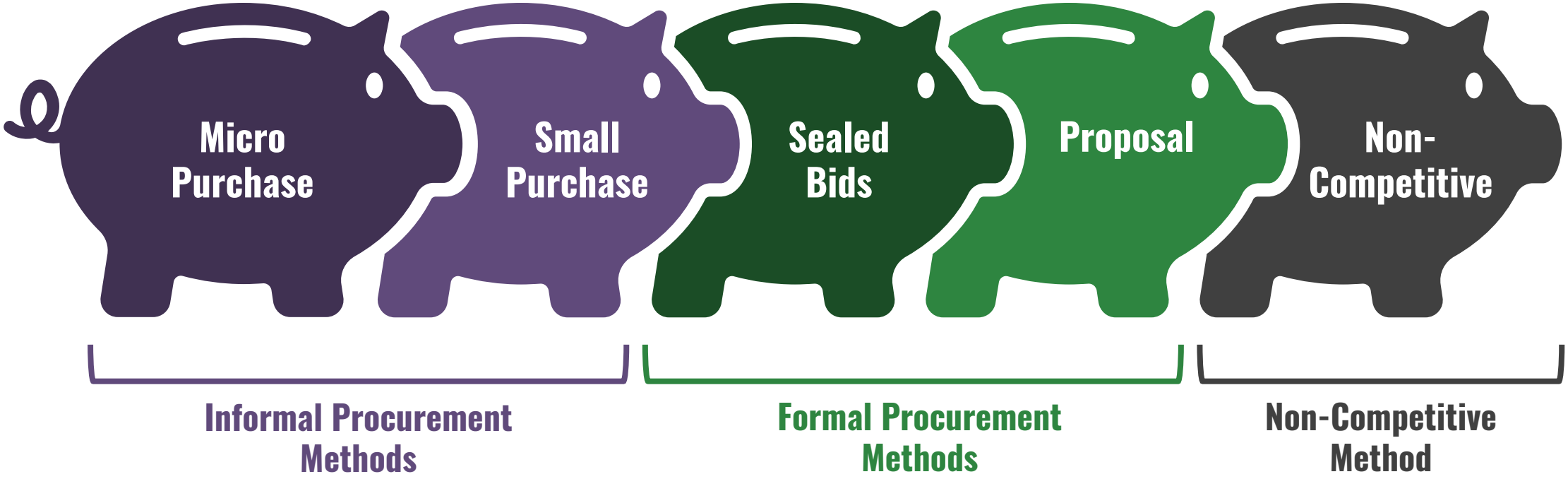
Selection of a provider that presented a conflict of interest

Arbitrary Action

Any arbitrary action in the procurement process that would limit competition

Procurement Methods - 2 CFR § 200.320

Five types of procurement methods



Procurement Methods - 2 CFR § 200.320

Informal Procurement Methods

Micro Purchase

Cost ≤ $10k
(Unless increased with certifications)

Requirements

- Applies to the purchase of goods and services
- No bid or quote process required.
- Price must be reasonable based on research, experience, and purchase history.
- Document the file with the reasonableness information.
- To the maximum extent practicable, distribute micro-purchases equitably among qualified suppliers.

Small Purchase

$10k < Cost ≤ $250k

Requirements

- Applies to the purchase of goods and services
- Price or rate quotes required from an adequate number of sources.
- Price or rate quotes can be collected informally (e.g., phone calls, website research).
- All quotes must be documented in the file.
- Below the Simplified Acquisition Threshold (SAT).

Procurement Methods - 2 CFR § 200.320

Formal Procurement Methods

Sealed Bids

Cost > $250k

Conditions

- A complete, adequate, and realistic specification or purchase description is available.
- Two or more responsible bidders willing and able to compete effectively.
- Firm fixed price contract type.
- Procurement types lends itself to a selection of successful bidder made principally based on price.
- Preferred method for construction contracts.

Sealed Bids

Cost > $250k

Requirements

- Must be solicited from an adequate number of qualified sources.
- Invitation for bids must be publicly advertised.
- Bids will be opened at the certain time and place.
- Contract award must be made to the lowest, responsible bidder.
- Firm fixed price contract type.
- A complete, adequate, and realistic specification or purchase description is available.

Procurement Methods - 2 CFR § 200.320

Formal Procurement Methods

Proposal
Cost > $250k

Requirements

- Fixed price contract or cost-reimbursement contract
- Sealed bidding not appropriate and other factors should be evaluated.
- Solicitation must be public and articulate all evaluation factors and relative importance.
- Must be solicited from an adequate number of qualified offerors.
- A written method for conducting evaluations and award selection.
- Award to the responsible offeror whose proposal is most advantageous with price and other factors considered.

Proposal (Architectural and Engineering Services)
Cost > $250k

Requirements

- Qualifications-based procurement
- Where price is not used as a selection factor for only A/E professional services.
- Evaluated offeror's qualifications, selected most qualified offeror, and negotiation of fair and reasonable compensation
- Qualifications-based procurement cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

Procurement Methods - 2 CFR § 200.320

Non-Competitive Method

Non-Competitive Procurement

Any dollar amount

Requirements

- Applies to situations where competitive procurements would not be appropriate
- Must document rationale for one of the following:
  1. Item available from a single source
  2. Public exigency or emergency for the requirement won't permit a delay resulting from competition solicitation
  3. Expressly authorized via written request by the awarding agency (USDOT)
  4. Competition is determined to be inadequate after solicitation
  5. Procurement is less than the micro-purchase threshold

Affirmative Steps - 2 CFR § 200.321 (a) & (b)

Must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Place qualified businesses and business enterprises on solicitation.
2. Assure that businesses and enterprises are solicited whenever they are potential sources.
3. Divide total requirements, into smaller tasks or quantities to permit maximum participation.
4. Establish delivery schedules which encourage participation by businesses and enterprises.
5. Use the services and assistance of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in 1 through 5.

Domestic Preferences for Procurement - 2 CFR § 200.322



The requirements must be included all contracts and purchase orders for work or products.

"Produced in the United States"
Means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States

"Manufactured products"
Items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber

Infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

Contract cost and price - 2 CFR § 200.324

- Must perform an independent cost or price analysis in connection with every procurement action in excess of the SAT including contract modifications before receiving bids or proposals.

- The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Contract Provisions - 2 CFR § 200.327

All contracts must contain the **applicable** provisions described in **appendix II to 2 CFR 200, in** addition to the Standard and Terms Condition of the Grant Award.

A

Remedies

Contracts must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide sanctions and penalties for those cases

B

Termination for Cause and Convenience

Contracts for more than $10,000 must address termination for cause and for convenience by the grant recipient, including how it will be carried out and the basis for settlement

C

Equal Employment Opportunity

Any contract that uses Federal funds to pay for construction work is a “federally assisted construction contract” and must include the equal opportunity clause found in 41 C.F.R. Part 60 1.4(b)

D

Davis-Bacon Act and Copeland “Anti-Kickback” Act (All prime construction contracts in excess of $2,000)

Per the Davis-Bacon Act, contractors must:

- Pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the Secretary of Labor’s wage determination
- Pay wages at least once per week

Per the Copeland “Anti-Kickback” Act, contractors are prohibited from:

- Inducing workers on a construction contract to give up any part of the wages they are owed

Contract Provisions - 2 CFR § 200.327

E

Contract Work Hours and Safety Standards Act

All contracts of more than $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with statutory requirements on work hours and safety standards

G

Clean Air Act and Federal Water Pollution Control Act

For contracts over $150,000, contracts must contain a provision requiring contractors to comply with the Clean Air Act and the Federal Water Pollution Control Act

H

Debarment and Suspension

Contractors and subcontractors are subject to debarment and suspension regulations. Contracts should not be awarded to debarred, suspended, or excluded parties

I

Byrd Anti-Lobbying Amendment

This provision prohibits the use of Federal appropriated funds to influence officers or employees of the Federal government in connection with obtaining any Federal contract, grant or any other award. Contractors that apply or bid for a contract for more than $100,000 must also file the required certification regarding lobbying and disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Top Procurement Mistakes and How to Avoid Them

Mistake	How to avoid this mistake
1 Restricting full and open competition	Compare the written procurement policy and procurement document prior to solicitation to ensure that competition is not restrictive. See 200.319(b).
2 Not performing detailed price or cost analysis for procurements above $250,000	Prior to receiving bids or proposals, ensure independent estimate has been completed and in file to be used as part of the bid/proposal assessment. See 200.324(a).
3 Engaging in a non-competitive procurement without documenting the justification and considerations	Use non-competitive procurements only when necessary. Document why and request approval if required. See 200.320 (c).
4 Awarding a "time-and materials" contract without a ceiling price and documenting why no other contract type is suitable	Develop written procedure for time and materials procurement documentation. Ensure a ceiling price in the draft contract prior to execution. See 200.318 (j).

Top Procurement Mistakes and How to Avoid Them

	Mistake	How to avoid this mistake
5	Not including the required contract clauses	Compare Appendix II contract clause with your draft contract to ensure all applicable contract clauses are included. See Appendix II to Part 200.
6	Awarding a “cost-plus - percentage-of -cost” or “percentage-of - construction-cost” contract	Ensure that the written procurement policy does not allow this type of contract for federal grant projects. See 200.324(d).
7	Awarding a contract to contractors that are suspended or debarred	Ensure that the written procurement policy requires Sam.gov to be checked for all contracts prior to award. Document the file that Sam.gov was checked. See 200.214.
8	Not documenting all steps of a procurement to answer questions that could arise months or years later	Ensure the written procurement policy has required document for all procurement transaction. See 200.318. Record retention is three years from the date of submission of the final expenditure report. See 200.334.

Key Takeaways



Review and understand the procurement standards in 2 CFR 200.317 through 2 CFR 200.327. Review and understand your written procurement procedures.



Select the correct type of procurement method and type of contract based on the type of services needed and the estimated costs. Identify all requirements the offerors must fulfill and the factors that will be used to evaluate bids or proposals.



Must maintain a complete record of any procurement transaction.



Review the draft contract to ensure that the required 2 CFR Part 200 contracts provisions and the any required contract provisions from the standard terms and conditions are in the contract.





Next Steps



Next Steps

Upcoming Meetings

Quarterly Reporting Webinar
May 23, 2024

Peer Exchange on Action Plans
Summer 2024



Questions?

For any questions following the webinar, please reach out to the FHWA Division Office or Office of Tribal Transportation POC for your grant. If you need help identifying this POC, please contact the **SS4A Team** at: SS4A.FHWA@dot.gov

Thank you!



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