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**Office of the Commissioner**  
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*Agency of Administration*

**MEMORANDUM**

**TO:** Appointing Authorities

**FROM:** Jennifer M.V. Fitch, P.E. Commissioner, Department of Buildings and General Services  
*Jennifer M.V. Fitch*

**CC:** Deborah Damore, Director, Office of Purchasing and Contracting

**DATE:** June 28, 2024 - Update

**SUBJECT:** Office of Management and Budget (OMB) Updated Federally Required Contract-Related Requirements

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When bidding contracts using Federal funds, the State must consider applicable Federal procedures for solicitation and award and required contract clauses. The basic authority for the Federal requirements, the Federal Office of Management and Budget’s “Uniform Guidance”, is 2 CFR Part 200.

To support procurement and contracting efforts related to applicable federal requirements, in addition to the Exhibit documents listed on the last page of this guidance document, updates to numerous documents/templates have been made and are posted on the Office of Purchasing and Contracting Forms webpage at [Forms | Buildings and General Services \(vermont.gov\)](https://forms.buildingsandgeneralservices.vermont.gov) and include:

Vertical Construction

- Construction Invitation to Bid
- Certificate of Compliance for Construction
- Construction Contract Form

Standard Services

- Form Request for Proposal (RFP) –
  - Form RFP Shell for Services
  - Form RFP Shell for IT
  - IT Bidder Response Form
- Form Standard Contract for Services
- IT Contract Template
- Amendment Form

## General

- Certificate of Compliance
- State of VT Federal Terms and Conditions (non-construction)
- State of VT Federal Terms and Conditions (construction)

As a reminder, always use the latest version of the federal terms supplement. This is required for any new amendment, as well as for any Requests For Proposals (RFPs) or contract negotiations that are already in process. All new RFPs and contracts going forward are expected to use the updated forms.

Please note that although many people may be familiar with the original ‘rollout’ of the modern 2 CFR Part 200, circa 2014, there were significant, important OMB updates that took place more recently, and that preexisting familiarity, and prior compliance documents or existing practices, related to 2 CFR 200, no longer meet the current OMB requirements.

The portions of the updated 2 CFR 200 that are relevant to procurement and contracting are specifically at “Subpart D - Post Federal Award Requirements – Procurement Standards”, [2 CFR 200 §§ 200.317 - 200.327](#), which accompany this Memorandum as Exhibit F. These have changed and expanded since the 2014 introduction of 2 CFR 200. Section 200.327 also requires: “The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part.” The current Appendix II to 2 CFR 200 is included as Exhibit G to this Memorandum.

Generally, under the Uniform Guidance, states are permitted to follow their own procurement processes, with only a few Federally mandated terms or processes. This is not the case for other non-federal entities such as contractors, non-profits, other political subdivisions, etc., who receive awards from the State, who must follow the more detailed procurement standards found in [2 CFR §200.318](#) (see also relevant portion of Exhibit F to this Memorandum).

The Federally required processes or terms and conditions will depend upon the contract type and maximum dollar amount. This guidance and the attached documents were developed to assist State agencies and departments in ensuring that the Uniform Guidance is followed for solicitations and contracts using Federal funds.

➤ **Template Terms and Conditions** to be included in contracts – Construction and Non-Construction are as follows:

- These terms are to be included in all contracts, and any amendments to contracts, that are funded in whole or in part with Federal funds.
- They should also be included in transactions such as task or purchase orders placed under contracts where there is any doubt as to whether the master contract contained the terms. These terms and conditions shall also be added in instances in which a purchase without formal contract is otherwise duly authorized.
- Agencies and Departments should also check with Federal funding agencies for any different or more specific terms, which, depending on the context, may be commonly required by federal agencies but could vary significantly depending on which federal agency, or even vary across different programs within a single federal agency.

- These forms may be edited to avoid duplication where a contract already contains complying terms, or more exacting terms required by the Federal funding agency.

➤ **Required Federal Solicitation and Selection Processes**

Debarment and Suspension. Federal funds may not be used to contract with vendors that have been suspended or debarred by the Federal government. State agencies and departments must run a prospective vendor through the [Federal SAM website showing “Exclusions”](#) to ensure they are not federally suspended or debarred before awarding them a contract. Consistent with existing state policy, all state contracts must also include certifications that the vendor is not suspended or debarred. **In addition, the attached certification document has been developed for use as part of a RFP for construction.** Although the federal requirements do not speak to State debarment, agencies and departments must continue to comply with existing State requirements to also check the State debarment list at <https://bgs.vermont.gov/purchasing-contracting/debarment>.

- Byrd Anti-lobbying certification. Contractors who apply or bid for an award of \$100,000 or more that includes federal funds, whether resulting from sole source, simplified bid, RFP or other certify that 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 shall 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 recipient who in turn will forward the certification(s) to the awarding agency. **The certification (Exhibit D to this memo) must be provided by the bidder at time of bid. If requesting a sole source, the certification must be obtained from the supplier and routed with the sole source waiver request.**
- Socioeconomic affirmative steps to be taken when issuing solicitations. **To meet the requirements identified below, you will need to post a notice of solicitation on the <http://www.vermontbidsystem.com/> site, and then also notify Vermont APEX Accelerator (formerly the Procurement Technical Assistance Center (PTAC)) at [ACCD.APEX@vermont.gov](mailto:ACCD.APEX@vermont.gov).**

States must take all necessary affirmative steps to ensure small and minority businesses, women-owned enterprises, and labor surplus area firms are used when possible. Affirmative steps must include at least the following six steps:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources;
3. 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;

4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. 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
6. Requiring the prime contractor, if subcontracts are to be let, to take the same affirmative steps as listed in numbers 1 through 5.

Bidder assistance can be identified as follows: *If a Contractor requires assistance in preparing their proposal, registering with SAM.gov or needs guidance on socioeconomic certifications, the Contractor may contact the Agency of Commerce & Community Development (ACCD), Department of Economic Development (DED), APEX Accelerator. The Vermont APEX Accelerator (formerly the Procurement Technical Assistance Center (PTAC)) specializes in helping small businesses navigate the documentation associated with State and Federal procurement. There is no cost to the Contractor for assistance provided by APEX Accelerator. Their website is: <https://accd.vermont.gov/economic-development/programs/ptac>*

- Domestic preferences. As appropriate, and to the extent consistent with law, states should, to the greatest extent practicable, provide a preference for the purchase of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). **The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. [2 C.F.R. § 200.322](#) also provides specific definitions for “Produced in the United States” and “manufactured products” that states should review.**
- Prohibition on certain telecommunications and video surveillance services or equipment. Recipients and subrecipients of Federal funds are prohibited from obligating or expending loan or grant funds to enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses “covered telecommunications equipment or services” (as described in [Public Law 115-232](#), section 889) as a substantial or essential component of any system, or as critical technology as part of any system. **To meet this requirement, solicitations and contracts for the applicable services must include contract language requiring the contractor to certify compliance with the State’s [Cybersecurity Standard Update](#).**

The following clauses are applicable when a contract utilizes State and Local Fiscal Recovery Funds (SLRF) funds, and must be passed down to subcontractors and grantees:

## **WHISTLEBLOWER PROTECTIONS**

Contractor shall comply with 41. U.S.C. § 4712 and inform their employees of their rights and remedies in the predominant native language of the workforce.

## **FAIR EMPLOYMENT PRACTICES**

Contractor must comply with 42 U.S.C. §2000d *et seq.*, and as enacted by 31 C.F.R. Part 22

## **FEDERAL AND STATE LAW, REGULATION, AND AGENCY GUIDANCE**

Contractor must comply with comply the requirements of the Social Security Act, 42 U.S.C. §§ 602 and regulations adopted by Treasury pursuant to section 602(f) of the Social Security Act, and guidance issued by Treasury regarding the forgoing, and comply with all other federal statues, regulations, and executive orders, including generally applicable environmental laws and regulations

## **UNIFORM GUIDANCE**

Contractor must comply with 2 C.F.R. Part 200 as modified by the Treasury's guidance.

## **INCREASING SEATBELT USE**

Contractor must comply with Executive Order 13043, 62 FR 1927 (April 18, 1997)

## **REDUCING TEXTING WHILE DRIVING**

Contractor must comply with Executive Order 13513, 74 FR 51225 (Oct. 6, 2009).

## LIST OF EXHIBITS

**Exhibit A – Federal Terms and Conditions – Non-Construction**

[State of VT Federal - NON-CONSTRUCTION - 05-24-24.docx \(live.com\)](#)

**Exhibit B – Federal Terms and Conditions – Construction**

[State of VT Federal - CONSTRUCTION - 05-24-24.docx \(live.com\)](#)

**Exhibit C – Example Contractor Certification of Non-Debarment (Construction)**

[Non-Collusion and Debarment Certification.doc \(live.com\)](#)

**Exhibit D – Example Contractor Byrd Anti-lobbying certification**

[Certification Regarding Lobbying.doc \(live.com\)](#)

**Exhibit E – Cybersecurity Standard Update**

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

**Exhibit F – 2 CFR 200 Subpart D Subpart D - Post Federal Award Requirements –  
Procurement Standards 2 CFR 200 §§ 200.317 - 200.327**

[eCFR :: 2 CFR Part 200 Subpart D - Procurement Standards](#)

**Exhibit G – 2 CFR 200 Appendix II**

<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D?toc=1>

Note: Current as of June 2024, as of issuance of this Memorandum; BGS will seek to monitor future changes, but agencies should also check periodically over time, both for updates on the BGS Purchasing & Contracting Website at [Forms | Buildings and General Services \(vermont.gov\)](#)