



Department of Buildings and General Services
Office of the Commissioner
133 State Street, 5th Floor
Montpelier, VT 05633


[phone] 802-828-3519
[fax] 802-828-3533

Agency of Administration

MEMORANDUM

TO: Appointing Authorities

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

FROM: Jennifer M.V. Fitch, P.E. Commissioner 

DATE: July 20, 2023

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

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 \(vermont.gov\)](#) and include:

Vertical Construction

- Invitation to Bid
- Construction – Attachment B
- Mean Prevailing Wage Rate Notice

Standard Services

- Form Request for Proposal (RFP) – Shell for Services
- Amendment Form
- Certificate of Compliance

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, can and should no longer be assumed to 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.” That 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

- 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 Request for Proposal (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 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. **See attached certification document that can be used as part of an RFP.**
- 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.**

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 2023-01](#).**

LIST OF EXHIBITS

Exhibit A – Federal Terms and Conditions – Non-Construction

[Revised-State_of_VT_Federal_TC_2021-Non-construction-07-19-23.docx \(live.com\)](#)

Exhibit B – Federal Terms and Conditions – Construction

[State of VT Federal TC 2021- CONSTRUCTION - 07-19-23.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 2023-01

<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 July 2023, 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 \(vermont.gov\)](#)