



47 **IV. Full and Open Competition**

48 With rare exceptions, procurement of goods, services, and construction will be the result of a competitive
49 market place. When goods, services, and construction are obtained in a manner other than a competitive
50 process, a written justification for this deviation will be provided to the Governance Committee for approval
51 prior to goods, services, or construction procurements being awarded. A written justification for non-
52 competitive selection will be based on unique qualifications, special circumstances, or similar conditions.

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54 **V. Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area
55 Firms**

56 The Program is committed to the inclusion of small and minority businesses, women’s businesses, and
57 labor surplus area firms in its procurement practices and will take all necessary affirmative steps to assure
58 that such firms are used, whenever possible.

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60 **VI. Conflict of Interest**

61 Offerors on a project will be required to address whether or not any potential conflict of interest exists
62 between that project and any of their past or on-going projects, including any projects currently being
63 conducted for the Program.

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65 **VII. Suspension and Debarment**

66 Prior to entering into a contract or other agreement to procure goods or services in a covered transaction
67 (generally, a transaction expected to equal or exceed \$25,000), assurance will be obtained that the
68 contracting entity and its principals are not suspended or debarred from receiving federal funds. This will
69 be done by one or more of the following processes: (1) review of the active and inactive exclusions
70 in <https://www.sam.gov/>, (2) collecting a certification from the entity, or (3) adding a clause to the covered
71 transaction.

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73 **VIII. Types of Contracts and Agreements for Procurement of Goods, Services, and Construction**

74 The following types of procurement formats/strategies will be employed, but they may be adjusted or
75 modified for a specific procurement so the approach is the most appropriate method to fill the need.

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77 **Formats:**

- 78
- 79 • Firm Fixed Price Contract – The total requirement has a fixed price for satisfactory delivery or
80 complete performance. Progress payments can be made based on completion of predetermined
81 deliverable milestones and percentage of contract amount for each.
 - 82 • Time and Materials Contract – Used when a determination is made that no other contract format
83 is suitable; typically for labor intensive requirements where the hours needed may depend upon
84 variables not clarified until the work has started; services are based upon direct labor hours at
85 a specified fixed hourly rate and materials at cost (including a material handling fee). The
86 agreement will provide for a “not to exceed” ceiling price that the contractor exceeds at its own
87 risk. Progress payments are based on elapsed time for services rendered during the agreed upon
88 period.

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90 **Strategies:**

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- 92 • Specific Project Contract – A contract developed for a specific project wherein the terms,
conditions, scope, budget, schedule, and contract form are specified.



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- Indefinite Delivery/Indefinite Quantity (ID/IQ) Term Contract – A multiple award contract for specified line items through which delivery orders can be negotiated and issued over a three to five-year period. There would be a guaranteed earnings level established for the contract.
 - Blanket Purchase Agreement (BPA) – An agreement for specific line items with a provider who is intermittently called upon for those goods or services; terms and conditions are negotiated up front and any orders against the BPA must comply.
 - Grant/Cooperative Agreement – An agreement with a non-profit or public entity which shares interest in the Program’s goals to provide services which benefit the interests of both parties. This is the only instrument where funds can be advanced prior to the work.

105 **Content:**

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- Contracts will include, and will require contractors to include in all sub-contracts, the applicable provisions described in Appendix II to Part 200 of the Code of Federal Regulations.

109 **IX. Thresholds and Procedures**

110 Procurement thresholds and general procedures are as follows. Contract thresholds reference the intended
111 total contract amount over the duration of the contract. For example, a contract that is intended to cover
112 five years at \$30,000 per year ($\$30,000/\text{year} \times 5 \text{ years} = \$150,000$) would be subject to the procedures for
113 a $> \$50,000$ threshold. Further procedural detail will be established by the Executive Director.

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115 The Executive Director can solicit proposals for goods, services, or construction costing less than \$25,000
116 without FC approval if the costs of the goods and services are within the budget approved by the GC.
117 Solicitations for proposals or bids for goods, services, or construction costing \$25,000 or more must be
118 approved in accordance with the “Governance Committee Approval Process for Contract Services”
119 specified herein.

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121 **All Thresholds:** Authorization of budgets lies with the FC and the GC as described in the Program
122 Document and summarized subsequently in this document. Authority and responsibility for
123 procurements contained within an authorized budget rests with the Executive Director. Input from
124 various Program Committees will be solicited as described below or as otherwise deemed
125 appropriate by the ED. In addition to the monetary thresholds described below, guidance from the
126 Governance Committee pertaining to requests in areas of particular sensitivity may result in
127 variances from the procedures described. The ED may delegate authority in writing to personnel
128 directly reporting to the ED for acquisitions less than \$5,000. Personnel so authorized may not
129 disburse more than \$5,000 to any one entity in a single year.

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131 **$\leq \$3,000$ Goods**

132 **$\leq \$2,500$ Services**

133 **$\leq \$2,000$ Construction**

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- Need for proposed item or service is documented.
 - Up to three quotes should be acquired; transaction can be by phone or in writing.
 - Award may be to the low quote or most qualified providing best value.

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138 **$> \$3,000$ but $< \$10,000$ Goods**

139 **$> \$2,500$ but $< \$10,000$ Services**

140 **$> \$2,000$ but $< \$10,000$ Construction**



- 141
- Need for proposed item or service is documented
 - Three quotes will be acquired by phone or in writing.
 - Award may be to the low quote or most qualified providing the best value.
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145 => **\$10,000 and < \$25,000:**

- Need for proposed item or service is documented.
 - Requirement will be advertised on Program Web site for five business days.
 - Quotes will be provided in writing by providers.
 - Award may be to the low quote or most qualified providing the best value.
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151 >= **\$25,000 and <= \$50,000:**

- Requirement is documented in detail – specifications, units, delivery schedule, level of expertise, qualifications of personnel, and other specific requirements are clearly defined.
 - Requirement will be advertised on Program Web site for a minimum of 15 days and a maximum of 30 days, based on discretion of ED. Notice of requirements may also be advertised in regional and/or local newspapers, based on discretion of ED, for up to three days with initial publication at least two weeks prior to offer closing date.
 - Quotes, bid packages, or proposals to be provided in writing as requested.
 - Pre-offer meeting may be held up to one week prior to offer closing date.
 - Submittals will be reviewed for determination of responsiveness and acceptability.
 - In the case of proposals:
 - Offers will be reviewed and where necessary, ranked by three or more subject matter experts. The selection of the subject matter experts will be based on knowledge and expertise of the project at issue. The panel of subject matter experts will be assembled with input from the appropriate Program Committees. The Governance Committee will always be solicited for input on the composition of the panel proposed.
 - An interview of the offerors with the subject matter experts and ED may or may not be required, as determined by the subject matter experts and the ED.
 - Award is to highest ranking offer where consideration may be given to fee as part of the selection process. Negotiation of scope and fee will occur subsequent to selection.
 - In the case of a bid or quote:
 - A public bid opening will be held.
 - Award is to lowest cost bidder who can meet the requirements of the bid solicitation.
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178 >**\$50,000:**

- Requirement is documented in detail – specifications, units, delivery schedule, level of expertise, qualifications of personnel, and other specific requirements are clearly defined.
 - For procurements, including contract modifications, over the Simplified Acquisition Threshold (\$150,000 as of August 6, 2015), a cost or price analysis will be performed prior to receiving bids or proposals.
 - Requirement will be advertised on Program Web site for a minimum of 21 days and a maximum of 45 days, based on the discretion of the ED. Notice of requirements will also be advertised in regional and/or local newspapers for up to three days with initial publication at least three weeks prior to offer due date.
 - Quotes, bid packages or proposals to be provided in writing as requested.
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- Pre-offer meeting may be held up to two weeks prior to bids/proposals due date.
 - Submittals will be reviewed for determination of responsiveness and acceptability.
 - In the case of proposals:
 - Offers will be reviewed and where necessary, ranked by three or more subject matter experts using a pre-determined evaluation system. The selection of the subject matter experts will be based on knowledge and expertise of the project at issue. The panel of subject matter experts will be assembled with input from the appropriate Program Committees. The Governance Committee will always be solicited for input on the composition of the panel proposed.
 - An interview of the offerors by the subject matter experts and ED may or may not be required, as determined by the subject matter experts and the ED.
 - Award is to highest ranking offer where consideration may be given to fee as part of the selection process. Negotiation of scope and fee will occur subsequent to selection.
 - In the case of a bid:
 - Conduct a public bid/proposal opening.
 - Award is to lowest cost bidder who can meet the technical requirements of the bid solicitation.

208 **X. Governance Committee Approval Process for Contract Services**

209 1. At each Governance Committee meeting, the Executive Director will report the contract services
210 that will be sought during the interim until the next GC meeting. The report will include the budget item
211 under which the work will be performed and the estimated amount required to provide the services. If the
212 request is in an area of particular sensitivity, guidance from the Governance Committee may result in
213 variances from the procedures described in terms of strictly monetary thresholds in the policy described
214 previously in this document. If the estimated amount exceeds the budget for the item, the increased budget
215 must be approved by the GC before the selection process can be initiated. The members of the GC may
216 offer representatives to review the requests for proposal and/or serve on the selection team.

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218 2. The Executive Director will draft all Requests for Proposals (RFPs) and seek comments from the
219 related advisory committee(s) and representatives offered by the GC members.

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221 3. The final drafts of the RFPs with the updated cost estimates will be submitted to the Finance
222 Committee (FC).

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224 If the RFP is for a single-year service and cost estimates do not exceed the budget for the related work item,
225 the FC may authorize the initiation of the selection process. If the cost estimates exceed the budget for the
226 related work item, the selection process must be delayed until the GC has the opportunity to approve or
227 reject a budget increase.

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229 All RFPs proposing multi-year services must be reviewed by the FC and approved by the GC, even if the
230 existing budget includes funds for the first year's activities. This is necessary as multi-year contracts affect
231 future budgets, and future budgets are the responsibility of the GC.

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233 4. The Executive Director will ensure the Selection Process progresses as outlined previously in this
234 Program Procurement Policy and in Section X of this document. For those requests requiring a selection
235 panel, the Executive Director will organize a selection team that includes representatives from the related



236 advisory committee and representatives offered by the GC. The Executive Director may chair the selection
237 team or designate as chair:

- 238 1. a member of the Executive Director’s staff
- 239 2. a member or alternate of the Governance Committee
- 240 3. the chair of the related Advisory Committee, or
- 241 4. any other person approved by the Governance Committee.

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243 5. After selection of the consultant/contractor, the Executive Director will prepare the draft contract
244 including, as a minimum: general provisions, scope of work, contract amount and schedule. The draft
245 contract will be submitted to the FC for review.

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247 If the contract meets the standards of the Program procurement policy, the contract is for a single-year
248 service, and the contract amount is within the budget for the work item, the FC can authorize the Executive
249 Director to finalize the contract and submit it to the FME, as well as issue the notice to proceed to the
250 consultant/contractor. If the contract amount exceeds the budget for the cost item, the finalization of the
251 contract must be delayed until the GC has the opportunity to approve or reject a budget increase.

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253 If the contract meets the standards of the Program procurement policy, the FC can authorize the ED to
254 finalize multi-year contracts if the RFP was approved by the GC and the proposed contract amount is within
255 the budget for the first year’s activities.

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257 Multi-year contracts will specify that each year’s work activities and contract amount must be approved in
258 writing before the consultant can proceed on that year’s assignments. In order to streamline this process,
259 the FC can authorize the ED to issue the written notice to proceed if the budget approved by the GC for that
260 year’s work activity is not exceeded. If revisions are needed to the budget, those revisions must be approved
261 by the GC.

262 **XI. Selection Process**

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264 When Program services are sought through the RFP process, written submittals and interviews, if
265 considered necessary, will be utilized in selecting the winning proposal. The Proposal Selection Panel will
266 have a minimum of two weeks after the proposal submission deadline to review and rank submitted
267 proposals in accordance with scoring guidelines developed by ED Office staff. Proposal scores will be
268 compiled by ED Office staff and the Proposal Selection Team will then discuss the rankings to determine
269 if interviews are necessary, and if so which contractors to interview. Interviews may be written, via
270 conference call, or face-to-face depending on the situation. Information from the proposal, from interviews,
271 and from internal Program discussions will be used to determine the successful contractor. Commitments
272 made by a contractor at the interview, if any, will be considered binding.

273
274 After completing the evaluation of all proposals and, if deemed necessary, interviews, the Proposal
275 Selection Panel will tentatively select the contractor that is most advantageous to the Program, with price
276 and other factors considered. A final award, however, will be contingent upon successful negotiation of a
277 contract. If the Program is unable to negotiate a mutually satisfactory contract with its first choice, it may,
278 at its sole discretion, negotiate with its secondary choices or cancel and reissue a new RFP.

279 **Debriefing of Unsuccessful Contractors**

281 Contractors whose proposals have not been selected for further consideration will be notified via e-mail.
282 Only contractors who have submitted a proposal under the criteria established by this solicitation document
283 may protest the rejection of a proposal and request a debriefing with the ED and staff. The request for a
284 debriefing must be received by the RFP point of contact within three (3) business days after the Notification



285 of Unsuccessful Proposal Letter is e-mailed to the contractor. The debriefing must be held within three (3)
286 business days of the request.

287
288 Debriefing discussions will be limited to a critique of the contractor’s proposal. Comparisons between
289 proposals or evaluations of the other proposals will not be allowed. The debriefing conferences may be
290 conducted in person or on the telephone and will be scheduled for a maximum of one hour.

291 **Protest Procedures**

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293 This procedure is available to contractors who submit a response to RFP solicitation documents and have
294 participated in a debriefing conference. Upon completing the debriefing conference, the contractor is
295 allowed three (3) business days to file a protest of the solicitation with the RFP point of contact. Protests
296 may be submitted by e-mail but must be followed by the original document. Contractors protesting a
297 contractor selection must adhere to the following procedure. This protest procedure constitutes the sole
298 administrative remedy available to bidders:

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300 All protests must be in writing and signed by the protesting contractor’s authorized agent. The protest must
301 state the grounds for the protest with specific facts and complete statements of the action(s) being protested.
302 A description of the relief or corrective action being requested must also be included.

303
304 Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- 305 • A matter of bias, discrimination, or conflict of interest on the part of an evaluator.
- 306 • Non-compliance with procedures described in the solicitation document or with the Program’s
307 Procurement Policy.

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309 Protests not based on procedural matters will not be considered. Protests will be rejected without merit if
310 they address such issues as: (1) an evaluator’s professional judgment on the quality of the proposal, or (2)
311 the Program’s assessment of its own needs or requirements.

312
313 Upon receipt of a protest, a protest review will be held. The Executive Director will consider the record and
314 all facts available and issue a decision within five (5) business days of receipt of protest unless additional
315 time is required, in which case the protesting party will be notified by the Program.

316
317 The final determination of the protest shall:

- 318 • Find the protest lacking in merit and uphold the Proposal Selection Panel’s action; or
- 319 • Find only technical or harmless errors in the solicitation process and determine the Proposal Selection
320 Panel to be in substantial compliance and reject the protest; or
- 321 • Find merit in the protest and provide the Governance Committee options which may include:
 - 322 - Correct the errors and re-evaluate all proposals; or
 - 323 - Reissue the solicitation document and begin a new process; or
 - 324 - Make other determinations and pursue other courses of action as appropriate.