



Ada County Highway District

Federally-Funded Policy and Procedure

Part One – Procurement
Part Two – Contract Administration/Management

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ATTACHMENTS:

- ACHD Organizational Chart
- 2 CFR 200 - Appendix II
- Micro-Purchase and Simplified Acquisition Threshold Changes
- ACHD Resolution 2256



Federally-Funded Policy and Procedure

Introduction



Ada County Highway District

Federally-Funded Procurement Policy and Procedure

Introduction

Ada County Highway District (ACHD) was established in 1971 as an independent government entity by a vote of the people and is the only countywide highway district in Idaho. ACHD is responsible for the planning, construction, maintenance, and improvements to over 5,000 lane miles of roadway and 783 bridges within six cities in Ada County. This roadway and bridge system has an estimated value of \$3 billion.

ACHD also serves as the Traffic Signal System Manager for Ada County and is responsible for the operation of all 440 signalized intersections within Ada County. The ACHD Budget for Fiscal Year 2019 is \$130 million.

ACHD responsibilities exclude private roads; as well as state highways, and Interstate 84 and 184, which are operated by the Idaho Transportation Department (ITD).

ACHD is comprised of the following organizational components:

- A five-person elected Commission each representing one of the five districts in Ada County;
- A Director supported by an Executive Committee comprised of Chief of Staff, General Counsel, Chief Human Resources Officer, and Chief Communications Officer;
- The Executive Committee also includes three Deputy Directors representing the Projects and Planning Division, Development and Technical Services Division, and the Maintenance Division. (See attached ACHD Organizational Chart).

ACHD utilizes a centralized-decentralized model of procurement processing based upon dollar thresholds. All formal procurements are processed by the Procurement and Contracting Office (PCO) Staff that report to the Chief of Staff. (See attached ACHD Organizational Chart). Informal procurements are processed by the PCO, but are also processed by ACHD Divisions and Departments, often with consultation/guidance from the PCO.

As a recipient of Federal funds, and for the purposes of this Policy and Procedure, the PCO will process all Federally-funded procurements.



Federally-Funded Policy and Procedure
Part One – Procurement



Federally-Funded Policy and Procedure

PART ONE - PROCUREMENT

SECTION 1. PURPOSE

- A. General.** This Policy and Procedure (P&P) has been prepared to ensure compliance with 2 CFR 200.318 (a). This citation requires "...The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section...".
- B. Order of Precedence.** For those procurement actions that are funded with Federal grants and assistance programs, both Federal and Idaho law seek to ensure that said funds are expended according to sound and compliant procurement principles. As such, this P&P has been prepared using "the most stringent rule"; that is, when any Federal procurement requirement is more restrictive, it is cited and required. However, when state law or Ada County Highway District (ACHD) Policy is the more restrictive procurement requirement, then Idaho Code or ACHD Policy is cited and required.
1. In addition, ACHD shall ensure that both an environmental clearance, and, if applicable, a public interest finding, are approved from the source agency prior to the expenditure of Federal funds per 23 CFR 771.113, Timing of Administration Activities, Federal Highway Administration (FHWA) and Federal Transit Administration (FTA).
 2. In addition to maintaining compliance, it is a goal of ACHD to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, and to ensure that ACHD receives the best goods and services, including public works construction, at the most reasonable price practicable.
 3. In pursuit of this goal, ACHD implements fair, open, and transparent procurement processes that are in compliance with Federal and State requirements. This approach will ensure participation by qualified and competent suppliers, contractors, and consultants, including state certified Disadvantaged Business Enterprises (DBE).
 4. Given this goal, ACHD finds it necessary to maintain written and compliant P&P for the processing of its Federally-funded procurements. When followed properly, the P&P stated herein contain provisions that assure the purchase of goods and services, including public works construction, reflect best practices, and meet Federal and State procurement requirements.
- C. Procurement Compliance.** In addition to 2 CFR 200, all ACHD procurement P&P shall adhere to applicable state law, primarily Idaho Code, Title 67, Chapter 28, Purchasing by Political Subdivisions; and the ACHD Policy Manual, Sections 2009 through 2021.
1. When there is a conflict between Federal requirements, including 2 CFR 200, the Uni-

form Guidance, and Idaho Code and/or the ACHD Policy Manual, ACHD shall follow the Federal law and provisions found in 2 CFR 200, the Uniform Guidance.

2. However, if Idaho Code and/or the ACHD Policy Manual is more restrictive than the Uniform Guidance and is not clearly pre-empted by Federal law, then ACHD shall follow Idaho Code and/or the ACHD Policy Manual.
3. In any case, ACHD will refer any questions concerning procurement compliance or order of precedence to its Legal Counsel and/or to the Federal awarding agency, especially when compliance conflicts arise.
 - a. **Fiduciary Responsibility.** All ACHD procurement P&P emphasize mitigating risk, improving transparency, and increasing accountability. As part of ACHD due diligence to protect taxpayer funds and other revenue sources from waste, fraud, abuse, and conflict of interest, ACHD shall maintain written standards of conduct governing the performance of its employees engaged in the procurement processes. See 2 CFR 200.318 (c) (1) and ACHD Policy Manual Section 2506, 2512, and 2513, especially Sections 2513.4, 2513.5, 2513.6, and 2514. Also see Idaho Code Title 18 - Chapter 13, 54-1914, 54-1920, 59-1026, and Title 74 - Chapter 4 and 5.
 - b. **Oversight.** On behalf of the ACHD Commission, the PCO will oversee, monitor, and process all Federally-funded procurements to ensure that such solicitations are administered in a compliant fashion. However, oversight of the resulting contract/agreement shall be the responsibility of the ACHD Division and/or Department. Oversight includes, but shall not be limited to, ensuring performance goals are met; that suppliers, contractors, and/or consultants comply with all applicable laws, regulations, and provisions; and that monitoring, review of compliance documentation, progress meetings, and additional requirements occur at regular intervals as may be stipulated in the contract/ agreement between the parties.
 - c. **Economic Purchasing.** In accordance with 2 CFR 200.318 (d) and (e), ACHD will foster economy and efficiency by reviewing all Federally-funded procurements (1) to avoid acquisition of unnecessary or duplicative items; (2) to consolidate to obtain more economical pricing; (3) to analyze lease versus purchase alternatives; and, where appropriate, (4) promote cost-effective use of shared agreements across Federal, state, and local government for procurement or use of common or shared goods and services.
 - d. **Procurement Record.** ACHD must also maintain records sufficient to detail the significant history of a procurement, including but not limited to the following:
 - (1) The rationale for the method of procurement. See 2 CFR 200.320.
 - (2) The selection of contract type and evaluation criteria. See 2 CFR 200.320
 - (3) Contractor selection or rejection, and rationale. See 2 CFR 200.320
 - (4) The basis for the Contract price. See 2 CFR 200.323
 - (5) The bid tabulation or proposal evaluation worksheet.
 - (6) The Responsibility Determination. See 2 CFR 200.320 (c).
 - (7) The Affirmative Action steps taken. See 2 CFR 200.321 (b).
 - (a) Placing qualified small and minority business and women's business enterprises, collectively known as Disadvantaged Business Enterprises (DBE) on solicitation lists.

- (b) Assuring that DBE are solicited whenever they are potential sources.
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBE.
- (d) Where the requirement permits, establishing delivery schedules that encourage participation by DBE.
- (e) As appropriate, using services and assistance from organizations such as the Small Business Administration (SBA) and the Minority Business Development Agency (MBDA).
- (f) If subcontracts are to be let, requiring the prime contractor to take the affirmative steps listed in paragraphs (i) through (v) of this section and requiring the prime contractor to provide documentation of their efforts.

SECTION 2. LAW AND REGULATION REFERENCES

- A. Uniform Guidance.** All references to “Uniform Guidance” made herein are to the Uniform Guidance: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200, published by the Office of Management and Budget (OMB) in the Federal Register on December 26, 2013, and effective beginning on or after December 26, 2014.
- B. Procurement Requirements under a Federal Award.** ACHD shall comply with the procurement policies and procedures established in 2 CFR 200. ACHD shall also comply with Idaho Code, Title 67, Chapter 28, Purchasing by Political Subdivisions; and the ACHD Policy Manual, Sections 2009 through 2021, as determined by Section 1.2, Procurement Compliance, cited above.

SECTION 3. COMPLIANCE RESPONSIBILITY AND AUTHORIZATIONS

- A. Commission Responsibilities.** The ACHD Commission is the authority for all matters in the administration of Federal funding, and for ensuring compliance with all Federal, State, and local procurement laws and regulations, in consultation with the ACHD Legal Counsel or his/her designee. Federal funding directives or initiatives by the ACHD Commission shall be implemented through the ACHD Director and his administration of ACHD Staff.
- B. Director Responsibilities.** With ACHD Commission authorization, the ACHD Director has the responsibility to ensure compliance in the processing of all Federally-funded procurements. The ACHD Director shall assure this Procurement P&P is amended, as needed, to comply with changes to Federal requirements. Any administrative amendments that do not materially change the intent of this P&P are to be performed by the ACHD Director and are authorized by the ACHD Commission.
 - 1. Director Authority.** Except as otherwise provided by the ACHD Commission, for all procurements that ACHD Commission approval has been obtained, either on a project-wide or individual solicitation basis, the ACHD Director or his/her designee is authorized to take all steps necessary for the preparation and processing of Federally-funded procurements.
 - 2. Staff Authority.** The ACHD Director authorization is provided to the PCO for the preparation and processing of all Federally-funded procurements. This authorization includes, but is not limited to, the following tasks/actions:
 - a. Preparation of Invitation to Bid (ITB), Request for Proposals (RFP), and Request for Qualifications (RFQ) Documents and/or other solicitation forms; ensuring said Docu-

ments contain all Federal, Idaho Code, and ACHD Policy Manual requirements, especially Davis-Bacon Wage Determinations, environmental clearance, obtaining internal ACHD approvals for said Documents, and publication of Legal Notices for Federally-funded procurements.

- b. Administration of all Federally-funded procurement processes including, but not limited to, web site postings, solicitation distribution, document holder list preparation, single-point communications, inquiries and clarification requests, and issuance of any addenda. Administration includes internal consultations with ACHD Divisions and Departments concerning delaying, canceling, or rejection of said procurements.
- c. Conducting all Federally-funded Bid and/or Proposal Openings and receiving Statements of Qualification (SoQ), Requests for Information (RFI), and/or other solicitation responses.
- d. Preparation of Responsiveness Reviews for all Federally-funded procurements including verification of Debarment or Suspension Status for prior related work, and Award Recommendations.
- e. Preparation of Evaluation Packets for ACHD Division and Department analysis of the procurement including cost analysis, independent cost estimate, and past performance.
- f. Preparation of Federally-funded contracts/agreements ensuring inclusion of scope of work, specifications, plans, and other applicable content such as bonding and insurance as well as all Federal, Idaho Code, and ACHD Policy Manual requirements.

C. Contract and Agreement Management. Upon award and full execution, individual ACHD Divisions and Departments shall be responsible for the administration and management of Federally-funded contracts and agreements including, but not limited to: oversight, inspection, and evaluation of performance to meet the terms, conditions, and scope of work or specifications of the contract and/or agreement; acceptance or rejection of work; issuance of change orders and/or supplemental agreements; review and payment of invoices; determination of retainage; bonds and insurance; negotiation and settlement of claims; warranty monitoring; and termination or close-out of contracts/agreements.

All ACHD Division and Department contract/agreement administration and management responsibilities shall be consistent with applicable Federal, State, and ACHD compliance requirements.

SECTION 4. FAIR AND OPEN COMPETITION

A. Competitive Procurement. As cited in Section I, A.3, above, ACHD shall ensure fair, open, and transparent competition in procurement, and strive to obtain two or more sources for a requirement in price and/or technical skill. ACHD procurement procedures shall not restrict or eliminate competition, or support an exclusionary or discriminatory specification including, but not limited to, the following:

1. Placing unreasonable requirements on prospective bidders/respondents in order to qualify to do business with ACHD. See 2 CFR 200.319 (a) (1).
2. Requiring unnecessary or unreasonable experience and performance requirements including unduly restrictive or excessive bonding requirements. See 2 CFR 200.319 (a) (2).
3. Supporting or allowing noncompetitive pricing practices between contractors or affiliated companies. See 2 CFR 200.319 (a) (3). Questionable practices include, but are not limited to, submissions of identical bid prices for the same products by the same group of

firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

4. Supporting or allowing organizational conflicts of interest. See 2 CFR 200.319 (a) (5).
5. Specifying only a "brand name" product without allowing offers of an "equal" or "equivalent" product or allowing an "equal" or "equivalent" product without listing the salient characteristics that the "equal" or "equivalent" product must meet to be acceptable for award. See 2 CFR 200.319 (a) (6). When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, ACHD shall provide a "brand name or equal" description that may be used as a means to define the performance; however, when this method is used, the ACHD specification must set forth the salient characteristics that the product must meet, and the offeror will be allowed to offer "equal" products meeting the salient characteristics.
6. Any arbitrary and capricious action in the procurement process. See 2 CFR 200.319 (a) (7).
7. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographical preferences, even if those preferences are imposed by State or local laws or regulations, except that geographic location may be a selection criterion for architectural, engineering, and related services. See 2 CFR 200.319 (b).

B. Award and Disclosure. ACHD shall award competitive procurement transactions without providing unfair competitive advantages to any potential offeror. Further, ACHD will fully disclose all information to prospective offerors for a reasonable period of time.

SECTION 5. PROCUREMENT STANDARDS

A. Applicable Standards. The following standards shall be applicable to all Federally-funded ACHD procurements:

1. All Federally-funded procurements subject to this P&P, regardless of whether by written quote or by ITB/RFP/RFQ shall be conducted in a manner that provides, to the fullest extent possible, fair, open, and transparent competition. See 2 CFR 200.319 (a).
2. The solicitation and the contract awarded thereunder must include a clear and accurate description of the technical requirements for the property, the Scope of Work for the services, or Plans and Specifications for public works construction to be acquired or performed in a manner that provides for fair and open competition. See 2 CFR 200.319 (a). Further, as applicable, products and services that conserve natural resources, protect the environment, and are energy efficient are to be preferred. To the extent they are practicable and economically feasible, products and services dimensioned in the standard system of measurement are to be accepted.
3. The solicitation must identify all factors to be used in evaluating bids or proposals. See 2 CFR 200.319 (c) (2).
4. The solicitation should state the type of contract that will be awarded, such as a firm fixed price or cost reimbursement, as defined in the Federal funding source. The reason for the selection of type of contract to be awarded shall be documented in the procurement files.
5. All Federally-funded procurements shall be limited to the amount necessary to support the quantity of property or extent of services actually needed. Quantities or options may

not be added to contracts solely to allow these quantities or options to be assigned at a later date.

6. The solicitation and resulting contract must also identify those Federal requirements that a bidder or offeror must fulfill before and during contract performance as set forth in current provisions and regulations. Each third-party contractor must extend those provisions to its subcontractors to the extent required by applicable laws and regulations. Although requirements may vary by procurement type and scope, such requirements may include, but may not be limited to, Buy America, Energy Conservation, Civil Rights, Davis-Bacon Act, and Disadvantaged Business Enterprises.
7. The cost principles contained in the Federal Acquisition Regulation (FAR), 48 CFR, Part 31, shall be incorporated by reference in all contracts and agreements when allowable costs must be determined for payment, e.g., all cost reimbursement contracts. This also includes when negotiating fixed price contracts and modifications where costs are estimated by the contractor, and then negotiated for purposes of establishing a contract price. Cost principles for evaluation of proposed costs must be consistent with Federal cost principles.
8. If the right to award to other than the low bidder is to be reserved, ACHD shall state such information in the solicitation. If the right to award to other than low the bidder is exercised, the reason and rationale for rejecting the low bidder must include sound business reasons, must be documented, and made available to the bidders and the overseeing Federal funding source. See Idaho Code 67-2806 (2) (i) and (j).
9. If the right to reject all bids or offers is to be reserved, ACHD shall state such information in the solicitation. If the right to reject all bids is exercised, the reasons and rationale for rejection must include sound business reasons, must be documented, and made available to the bidders and the overseeing Federal funding source. See Idaho Code 67-2805 (1) (d), 67-2805 (2) (a) (viii), 67-2805 (2) (b) (xi), 67-2806 (1) (d), and 67-2806 (2) (h).
10. ACHD shall administer contracts in a manner which ensures that contractors perform in accordance with the terms and conditions and specifications of their contracts. See 2 CFR 200.318 (b)

B. Independent Cost Estimate. ACHD must perform an independent cost estimate (ICE) before receiving Federally-funded bids or proposals including contract modifications above the Simplified Acquisition Threshold (SAT). The estimate or analysis must be documented. The method and the degree of analysis are dependent on the facts surrounding the particular procurement. See 2 CFR 200.323 (a). It is important to note that the SAT of \$150,000 cited in 2 CFR 200.320 (b) was amended by Public Law 115-91 on 12/12/17. The amended SAT is now \$250,000 under Section 805 of PL115-91. In the case of professional services, when negotiating a price that exceeds the ICE, ACHD shall provide a written explanation concerning how the various costs and profit were evaluated, how the contract price was negotiated, and why the price agreed upon is fair and reasonable.

C. Cost Plus Contracts. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. See 2 CFR 200.323 (d).

D. Time and Materials Contracts. Time and Materials Contracts may be used only after a documented determination is made that no other type of contract is suitable. Such contracts will specify a ceiling price/limitation of funding that the Contractor shall not exceed except at its own risk. Prior to the use of a time-and-materials Contract, ACHD shall also make a

documented determination that the Contactor accounting system is adequate to properly segregate and bill costs.

SECTION 6. ETHICAL STANDARDS OF CONDUCT

- A. **Code of Ethics.** The Code of Ethics (CoE) for ACHD is contained in the ACHD Policy Manual. The purpose of the CoE is to establish minimum standards of ethical conduct for all ACHD elected officials, officers, and employees. It is the intent of this CoE to enhance and clarify ACHD policy and to provide practical guidance.
1. Employees should comply with both the letter and the spirit of this CoE, and should strive to avoid situations which create impropriety, the appearance of impropriety, or unfairness.
 2. The CoE can be found in the ACHD Policy Manual under Section 2512, Code of Ethics; 2513, Ethical Standards and Principles, especially 2513.5, Conflict of Interest, and 2513.6, Other Mandatory Ethical Standards; and 2514, Penalties. Sanctions for violations under this section may include any of those set forth in Idaho Code Title 18 - Chapter 13, 54-1914, 54-1920, 59-1026, and Title 74 - Chapter 4 and 5.
 3. It is also the policy of ACHD to avoid organizational conflict of interest.
 - a. An organizational conflict of interest occurs when suppliers, contractors, and consultants are unable, or potentially unable, to render impartial assistance or advice to ACHD due to activities, relationships, contracts, or circumstances which may impair the suppliers', contractors', and consultants' objectivity or give an unfair competitive advantage to suppliers, contractors, and consultants.
 - b. Each planned acquisition must be analyzed to identify and evaluate potential organizational conflict of interest as early in the procurement process as possible, and to avoid, neutralize, or mitigate potential conflicts before contract award.
 4. In addition, suppliers, contractors, and consultants are subject to debarment and suspension from government contracting for knowingly failing to disclose violations and overpayments on government contracts in a timely manner. FAR Subpart 9.4; Debarment, Suspension, and Ineligibility.

SECTION 7. PROCUREMENT TYPES

- A. **Request for Information (RFI):** As a procurement best practice, ACHD shall use an RFI at the planning stage of a solicitation when gaps, conflicts, or ambiguities exist in the development of scopes of work and/or specifications. An RFI shall also be used in circumstances where written information is needed about the industry standards, technology issues, and/or capabilities of the goods and/or services being sought. Further, an RFI can be used to obtain comments, feedback, or reactions from potential respondents, suppliers, or contractors prior to the issuance of a solicitation.
1. Generally, an RFI does not seek price or cost information.
 2. The RFI is a non-binding method whereby ACHD publishes via newspaper, Internet, or direct mail its need for input from interested parties for a planned solicitation. Normally an RFI follows a format whose responses can be used for comparative purposes.
- B. **Invitation to Bid (ITB):** ACHD shall use an ITB in all cases where a sealed bid process is required by law, See 2 CFR 200.320 (c), and Idaho Code 67-2805 (2) and 67-2806 (2). In addition to these Formal Procurements, an ITB can be used as a Procurement Type for

Micro-Purchases, Small Purchases, and Informal Procurements as cited under Section 8 below.

1. The ITB shall be used when price is the awarding criteria and the procurement lends itself to a firm fixed price contract. ACHD may also award upon a Base Bid or a Base Bid plus Additive Alternate Bid Amount(s). Additive Alternate Bid Amount(s) shall be prioritized.
2. The ITB shall contain a complete, adequate, and realistic specification or purchase description. See 2 CFR 200.320 (c) (1).

C. Request for Proposals (RFP): ACHD shall use an RFP when, among other considerations, price is not the sole determining factor. See Idaho Code 67-2806A (1) and 2 CFR 200.320 (d). In addition, an RFP may be utilized when the procurement lacks definite specifications, when the goods or services being procured involve creative design, and/or when subjective criteria is considered in the contract award.

1. At a minimum, the RFP shall provide the process instructions, specifications for the goods or scope of work for the services contemplated, contract terms, and the evaluation criteria and scoring methodology. See 67-2806A (3) and 2 CFR 200.320 (d) (1).
2. The RFP procurement process shall be in accordance with minimum requirements established in Idaho Code 67-2806. Also see 67-2806A (4).

D. Request for Qualifications (RFQ): ACHD shall use an RFQ when soliciting professional services as identified in Idaho Code 67-2320 (1). Guidance may also be sought under 2 CFR 200.320 (d) (5). Under the RFQ Procurement Type, professional services include engineers, architects, landscape architects, construction managers, and land surveyors licensed in the State of Idaho.

1. Further, under an RFQ, selection shall be based on qualifications and demonstrated competence or a Qualifications-Based Selection (QBS) process - not on cost. After selection has been made, fair and reasonable prices shall be considered as part of the negotiation of contracts or agreements for professional services. See Idaho Code 67-2320 (2) (d).
2. In addition to providing a detailed scope of work, the RFQ shall include the criteria and procedures used for the selection of qualified persons or firms to perform such professional services. See Idaho Code 67-2320 (2) (b).
3. Finally, ACHD shall use an RFQ when pre-qualifying public works contractors. See Idaho Code 67-2805 (2) (b).

SECTION 8. PROCUREMENT CATEGORIES

A. Professional Services: Professional Services Procurement Methods are found under Idaho Code 67-2320 (2) and (3), however, the definition of Professional Services is located under 67-2320 (1). This definition includes selections for engineering, architectural, landscape architecture, construction management, and land surveying services. Such services are provided by persons licensed pursuant to Idaho Code Title 54, Chapters 3, 12, 30, and 45.

B. Public Works Construction: Public Works Construction Procurement Methods are found under Idaho Code 67-2805, however, the definition of Public Works Construction is located under 54-1901 (2) (c) and includes any or all of the following (i) Heavy Construction,

(ii) Highway Construction, which is defined as all work included in highway construction contracts; (iii) Building Construction, which is defined as all work in connection with any structure for the support, shelter, and enclosure of persons, chattels, personal and movable property of any kind, requiring in its construction the use of more than two (2) unrelated building trades or crafts; and (iv) Specialty Construction which is defined as any work in connection with any public works construction requiring special skill and the use of specially skilled trades or crafts.

C. Services and Personal Property: The purchase or lease of personal property or the procurement of services, other than personal property or services excluded pursuant to section 67-2803, are found under Idaho Code 67-2806 (1) and (2). Services are defined as the furnishing of labor, time, or effort by a contractor or vendor, whereas, personal property is generally considered goods and are movable as opposed to real property or real estate.

SECTION 9. PROCUREMENT METHODS

ACHD shall conduct all Federally-funded procurements by the following types as defined in 2 CFR 200.320; Idaho Code 67-2320, 67-2805, 67-2806, and 67-2806A; the ACHD Policy Manual; and 2 CFR 200, Appendix II to Part 200, A.

A. Micro-Purchases: Micro-Purchases are procurements of material, equipment, supplies, work, and/or services of less than \$5,000, procurement shall be guided by the best interests of ACHD without need to engage in a quote process of any kind. See ACHD Policy Manual 2010.4 and 2011.2.2, Quotes. The size of the procurement may not be divided or reduced merely to come within the Micro-Purchase limit.

1. It is important to note that Micro-Purchases, formerly at \$3,000 in accordance with 2 CFR 200.320 (a), were amended to \$10,000 by Section 806 (a) of Public Law 115-91, on 12/12/17. As such, the ACHD Policy Manual Threshold of \$5,000 or less is more restrictive and is required for Micro-Purchases. ACHD procedure prefers an ICE be conducted and documented prior to receiving quotes to determine an estimated cost of materials, equipment, supplies, work and/or services.
2. Micro-Purchases, however, should be distributed equitably among qualified suppliers, contractors, and consultants; and documentation is required that the price received is fair and reasonable.
3. Per 2 CFR 200.320 (a), in the case of public works construction, the threshold for Micro-Purchases is \$2,000 and bids of more than \$2,000 are subject to Davis-Bacon prevailing wage requirements.
4. FWA Micro-Purchases of \$2,500 or less are exempt from Buy America requirements per 23 CFR 635.410 (b) (4). All FTA Micro-Purchases are exempt from Buy America requirements per 49 USC 5323 (j) (13).

B. Small Purchases: Small Purchases are procurements of materials, equipment, supplies, work, and/or services between \$5,000 and \$50,000 in accordance with ACHD Policy Manual 2010.4, Quotes. Also see Idaho Code 67-2803 (2). A sealed bid process is not required for Small Purchases. The size of the procurement may not be divided or reduced merely to avoid additional procurement requirements applicable to larger acquisitions.

1. It is important to note that Small Purchases, formerly between \$3,000 and the SAT of \$150,000 in accordance with 2 CFR 200.320 (b), were both amended by Public Law 115-91 on 12/12/17. The amended Small Purchase range is now between \$10,000 un-

der Section 806 (a) and \$250,000 under Section 805 respectively of PL115-91. However, the ACHD Policy Manual range of between \$5,000 and \$50,000 is more restrictive and is required for Small Purchases.

2. In accordance with 2 CFR 200.320 (a), for public works construction procurements, the range for Small Purchases is between \$2,000 and \$50,000, and they are subject to Davis-Bacon prevailing wage requirements.
3. FWHA Small Purchases are not exempt from Buy America requirements per a \$2,500 threshold; however, FTA Small Purchases are exempt from the Buy America requirements as provided by the \$150,000 threshold under 49 USC 5323 (j) (13).
4. As identified in Idaho Code 67-2320 (2) (g), solicitations for professional services that involve engineering, architectural, landscape architecture, construction management and land surveying, that exceed \$25,000, require a formal procurement process.
5. For all Small Purchases, ACHD procedure prefers an ICE be conducted and documented prior to receiving bids or proposals to determine an estimated cost of materials, equipment, supplies, work and/or services.
6. Price or rate quotations must be obtained from at least three (3) qualified sources per ACHD Policy Manual 2010.4 and 2011.2.2. Also see 2 CFR 200.320 (b).

C. Informal Procurements: A sealed bid process must be used for all Informal Procurements. For all Informal Procurements, ACHD procedure requires an ICE be conducted and documented prior to receiving bids or proposals to determine an estimated cost of materials, equipment, supplies, work and/or services. Award protest procedures shall be included in the Contract Documents.

1. Informal Procurements for public works construction are solicitations with a value between \$50,000 and \$200,000 in accordance with Idaho Code 67-2805 (1). Informal Procurements, Given the \$2,000 threshold, all informal public works construction procurements are subject to Davis-Bacon prevailing wage requirements.
2. Informal procurements for goods and services are solicitations with a value between \$50,000 and \$100,000 in accordance with Idaho Code 67-2806 (1) or 67-2806A (4).
3. Due to amendments in Federal law, as noted under B.1 above, Idaho Code is cited as it is more restrictive and is, therefore, required for Informal procurements.
4. Informal Bidding Procedures. The following procedures apply to procurements in which informal bidding applicable:
 - a. ACHD shall provide an ITB/RFP containing detailed written specifications or scope of work (SoW) to no fewer than three (3) ACHD-designated prospective respondents. The ITB/RFP may be delivered via electronic or physical means. See Idaho Code 67-2805 (1) (a) and 67-2806 (1) (a). However, ACHD procedure prefers four (4) to six (6) prospective bidders/respondents and issuance on a Friday.
 - b. The ITB/RFP shall describe the electronic or physical delivery method(s) authorized, the date and time by which a bid/proposal must be received by ACHD, and shall provide a reasonable time to respond to the solicitation. A reasonable time shall not be less than three (3) business days except in the event of an emergency. See Idaho Code 67-2805 (1) (b) and 67-2806 (1) (b). ACHD procedure prefers one week and submission on a Friday.
 - c. The ITB/RFP shall contain instructions that all inquiries must be submitted in writing

to the assigned single point contact by the stated inquiry deadline. If inquiries and/or request for clarification are received, they shall be responded to via a final addendum.

- d. The ITB/ RFP may contain a Liquidated Damages (LD) clause:
 - (1) Risk Management. ACHD shall determine whether to use or not to use an LD provision for a specific procurement, as part of an overall risk management effort.
 - (2) Calculation. ACHD shall reasonably calculate the amount of LD that represents the estimated actual damages ACHD might suffer as the result of an inadequacy or delay in Contract performance, and such damages would be difficult or impossible to determine with certainty.
 - (3) Measurement. The LD may be imposed for an entire Contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate.
 - (4) Solicitation Requirements. If it is determined that an LD provision will be required, the solicitation shall identify with specificity the circumstances in which the LD will be imposed and the rate to be charged. The Procurement File shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary or punitive.
 - (5) Recovery Credited to Project. All LD amounts recovered under a Federally-funded Contract will be credited to the project unless the funding source agrees otherwise in writing.
- e. Written objections to specifications or procedures must be received by ACHD at least one (1) business day before the date and time upon which proposals are scheduled to be received. See Idaho Code 67-2805 (1) (c) and 67-2806 (1) (c).
- f. When written proposals have been received, the Bid/Cost Results, Bid/Cost Abstract, and Responsiveness Review shall be completed. The Responsiveness Review shall include, at minimum, confirmation of the following as applicable: Cost, Licensure, Bid Security, Statutorily-Required Subcontractors, Addendum Acknowledgement, et.al.
- g. In the case of an RFP, in addition to a Responsiveness Review, an evaluation shall be completed concerning compliance with the stated specifications/SoW and other factors stated in the RFP Documents. All RFP awards will be made by the ACHD Commission. See Idaho Code 67-2806A and ACHD Policy Manual 2010.7.
- h. Once completed, the Responsiveness Review, and evaluation as applicable, must be submitted to the appropriate awarding authority. Award approval shall be made to the lowest cost responsive bid or, in the case of an RFP, the highest ranked proposal. If ACHD finds it in its best interest, the awarding authority may reject the procurement and re-let the informal procurement. See Idaho Code 67-2805 (1) (d) and 67-2806 (1) (d).
- i. If fewer than three (3) proposals are received or considered, ACHD may acquire the work or property/services as it deems best. In such cases, a description of the efforts undertaken to procure the proposals shall be documented. The documentation shall be maintained for at least six (6) months after the procurement decision is made. See Idaho Code 67-2805 (1) (e) and 67-2806 (1) (e).
- j. If an apparent low-cost bid is found to be non-responsive, the reason(s) for the determination shall be stated on the record and reported to the ACHD Chief of Staff.

- k. All respondents will be notified of the rejection or postponement of the procurement.
- l. Following the award, ACHD shall archive each procurement, including all proposals, in Laserfiche and maintain the documents for inspection via Public Record Request.

D. Formal Procurements: A sealed bid process shall be used for all ACHD Formal Procurements. All ACHD Formal Procurements require an ICE be conducted and documented prior to receiving bids or proposals to determine an estimated cost of materials, equipment, supplies, work and/or services. Due to amendments in Federal Law, as noted under B.1 above, Idaho Code is cited below as it is the more restrictive threshold and is, therefore, required for Formal Procurements. Award protest procedures shall be included in the Contract Documents.

- 5. Formal Procurements for public works construction are solicitations with a value of more than \$200,000 per Idaho Code 67-2805 (2) (a).
- 6. In addition, all solicitations for public works construction that utilize a Request for Qualifications (RFQ) to pre-qualify contractors followed by sealed bids per Idaho Code 67-2805 (2) (b) are Formal Procurements.
- 7. Davis-Bacon and Related Acts apply to all Federally-funded formal public works construction procurements.
- 8. Formal procurements for goods and services are solicitations with a value of more than \$100,000 per Idaho Code 67-2806 (2) or 67-2806A.
- 9. As stated under Idaho Code 67-2320 (2) (g), all professional services solicitations of more than \$25,000 shall follow public works formal procurement procedures.
- 10. Formal Bidding Procedures. The following procedures apply to procurements in which formal bidding is applicable:
 - a. When soliciting Formal Procurements, ACHD shall publish two (2) Legal Notices for an ITB/RFP/RFQ in the Idaho Statesman, the ACHD official newspaper. The first Legal Notice shall be published on a Monday. Once publicly advertised, the Legal Notice shall be posted to the ACHD Intranet and Web Site. The second Legal Notice shall be published on a Monday, seven (7) days after the first Legal Notice. The Legal Notices shall set a date, time, and place for the opening of Formal Procurements. This date and time shall be at least seven (7) days after the publication of the second Legal Notice. The Legal Notice shall succinctly describe the materials, equipment, supplies, work, and/or services to be procured. See Idaho Code 67-2805 (2) (a) (i), 67-2805 (2) (b) (i), and 67-2806 (2) (b).
 - b. Whether or not sealed bids are required, Pre-Bid Meetings, and/or Pre-Submission Meetings and Proposal Workshops may be held for competitive procurements. For the purpose of answering questions and clarifying the requirements or specifications relevant to the ITB/RFP/RFQ, Pre-Bid/Submission Meetings are recommended. The date, time, and location for such meetings shall be included in the Legal Notice. Attendance at Pre-Bid/Submission Meetings can be mandatory or voluntary depending upon the requirements of the procurement and the funding source.
 - c. Further, when soliciting Formal Procurements, ACHD shall prepare Contract/RFP/RFQ Documents and make them available upon request to any interested party. The Contract/RFP/RFQ Documents shall, at minimum and, as applicable, contain the Legal Notice, Bid/Cost Forms, Bonding and Insurance Requirements, Bidder/Respondent Instructions, Specifications/SoW, Plans, Special Instructions,

General Conditions, QBS Process, Evaluation Criteria, et. al. See Idaho Code 67-2320 (2) (g), 67-2805 (2) (a) (i), 67-2805 (2) (b) (v), and 67-2806 (2) (b). Also see 2 CFR 200.320 (c) (2) (i) through (iii) and 2 CFR 200.325.

- d. Contract/RFP Documents may contain a Liquidated Damages (LD) clause:
 - (1) Risk Management. ACHD shall determine whether to use or not to use an LD provision for a specific procurement, as part of an overall risk management effort.
 - (2) Calculation. ACHD shall reasonably calculate the amount of LD that represents the estimated actual damages ACHD might suffer as the result of an inadequacy or delay in Contract performance, and such damages would be difficult or impossible to determine with certainty.
 - (3) Measurement. The LD may be imposed for an entire Contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate.
 - (4) Solicitation Requirements. If it is determined that an LD provision will be required, the solicitation shall identify with specificity the circumstances in which the LD will be imposed and the rate to be charged. The Procurement File shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary or punitive.
 - (5) Recovery Credited to Project. All LD amounts recovered under a Federally-funded Contract will be credited to the project unless the funding source agrees otherwise in writing.
- e. The ITB/RFP/RFQ shall contain instructions that all inquiries must be submitted in writing to the assigned single point contact by the stated inquiry deadline. If inquiries and/or request for clarification are received, they shall be responded to via a final addendum.
- f. Written objections to specifications or procedures must be received by ACHD at least three (3) business day before the date and time upon which proposals are scheduled to be received. See Idaho Code 67-2805 (2) (a) (ii), 67-2805 (2) (b) (iii) and (vi), and 67-2806 (2) (c).
- g. When formal bids/proposals have been received, they shall be publicly opened at the date and time as advertised in the Legal Notice. Upon opening the bids/proposals, the Bidder/Respondent name and amount shall be read aloud. See Idaho Code 67-2805 (2) (a) (v), 67-2805 (2) (b) (ix), and 67-2806 (2) (e). Also see 2 CFR 200.320 (c) (2) (iii). In the case of an RFQ, Statements of Qualifications (SoQ) received are documented as to the date and time of submission to ensure compliance.
- h. As applicable, after the public ITB/RFP opening or SoQ submission, the Bid/Cost Results, Bid/Cost Abstract, and Responsiveness Review shall be completed. The Responsiveness Review shall include, at minimum, confirmation of the following, as applicable:
 - (1) Cost;
 - (2) Debarment/Suspension Clearance via the System for Award Management (SAM) that supercedes the Excluded Parties List System (EPLS), see 2 CFR 200 Appendix II (I);
 - (3) Licensure, see Idaho Code 54-3, 12, 19, 30, and 45;
 - (4) Bid Security, see 67-2805 (2) (a) (iv), 67-2806 (2) (d), and 2 CFR 200.325 (a);

- (5) Statutorily-Required Subcontractors, see Idaho Code 67-2310;
- (6) Addendum Acknowledgement;
- (7) Format Requirements; et. al.

If an apparent low-cost bid/proposal is found to be non-responsive, the reason(s) for the determination shall be stated on the Responsiveness Review and reported to the ACHD Chief of Staff. See 2 CFR 200.326 for all Federally-Required Contract Provisions.

- i. Upon completion, ITB/RFP Bid/Cost Results shall be posted to the ACHD Intranet and Web Site. The Bid/Cost Abstract is to be distributed internally among ACHD Staff, however, the Abstract shall not be made publicly available until after award by the ACHD Commission. Upon award of the Formal Procurement, the Bid/Cost Abstract shall be posted on the ACHD Web Site.
- j. In the case of RFP/RFQ, in addition to a Responsiveness Review, an evaluation shall be completed concerning compliance with the stated specifications/SoW and other factors included in the RFP/RFQ Documents. ACHD shall not modify evaluation factors after Proposals/SoQ are received. All RFP awards will be made by the ACHD Commission. See Idaho Code 67-2806A and ACHD Policy Manual 2010.7. All SoQ submitted in response to the On-Call Consultant Services (OCCS) RFQ process shall be evaluated for inclusion to the three-year OCCS List. See Idaho Code 67-2320 (h).
- k. Except where prohibited by state law, Proposals/SoQ shall be reviewed by a Selection Committee (SelComm) established by ACHD Policy and applying the Evaluation Criteria contained in the RFP/RFQ. Such Criteria shall include Past Performance with ACHD. If ACHD contracts for evaluation services or include non-ACHD personnel in the evaluation process, the procurement standards of this P&P will apply to those contractors or SelComm members selected to perform evaluation functions on behalf of ACHD. The SelComm will grade all factors with their consensus recorded on the Evaluation Form also contained in the RFP/RFQ Documents. At the discretion of ACHD, verbal interviews with any offeror who has submitted a Proposal/SoQ may be made to determine their qualifications for further consideration. Upon completion of the evaluation, the SelComm shall make a recommendation for contract award to the ACHD Commission. The recommendation shall be based upon each of the Evaluation Criteria and the respondent with the highest overall total of evaluation points. As always, the ACHD Commission may reject any or all Proposals/SoQ. See Idaho Code 67-2320 and 67-2806A.
- l. All completed ITB/RFP Responsiveness Reviews and evaluations, as applicable, must be submitted to the appropriate ACHD Staff who will cause a Recommendation Memorandum to be prepared. The Memorandum shall be submitted to the ACHD Commission for consideration and award of the Formal procurement. In most cases, award approval shall be made to the lowest cost responsive bid or, in the case of an RFP, the highest ranked proposal. However, a contract for goods and services may be awarded to other than the lowest cost proposal. See 67-2806 (2) (i). In the case of an RFQ, individual procurements will be submitted and approved by the ACHD Commission. For OCCS RFQ, the list of qualified respondent firms shall be submitted to and approved by the ACHD Executive Committee. If ACHD finds it in its best interest, the Commission may reject the ITB/RFP/RFQ and re-let the Formal Procurement. See Idaho Code 67-2805 (2) (a) (viii) and (2) (b) (xi), and 67-2806 (2)

(h). Also see 2 CFR 200.320 (c) (2) (iv) and (v). All respondents will be notified of the rejection or postponement of the procurement.

m. Following the award, ACHD shall archive each procurement, including all relevant documentation, in Laserfiche and maintain the documents for inspection internally and via a Public Record Request.

E. Non-Competitive Procurements: Non-Competitive Procurements include Emergency Expenditures and Sole Source Procurement. Idaho Code 67-2808 (1) (a) and (2) (a). Also see 2 CFR 200.320 (f).

1. Emergency Expenditures result when the ACHD Commission declares that an emergency exists, and that the public interest and necessity demand the immediate expenditure of public money to address a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster; to complete emergency work to prepare for the national or local defense; or to implement emergency work to safeguard life, health, or property. Upon making the declaration of emergency, any sum required in the emergency may be expended without compliance with formal bidding procedures.
2. Sole Source Expenditures result when the ACHD Commission declares that there is only one (1) vendor for the public works construction, services, or personal property to be acquired. For purposes of this subsection, only one (1) vendor shall refer to situations where there is only one (1) source reasonably available and shall include, but not be limited to, the following situations:
 - a. When public works construction, services, or personal property is required to respond to a life-threatening situation or a situation which is immediately detrimental to the public welfare or property.
 - b. When the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration.
 - c. When a sole vendor item is needed for trial use or testing.
 - d. When purchasing mass-produced movies, videos, books, or other copyrighted materials.
 - e. When purchasing public works construction, services, or personal property for which it is determined there is no functional equivalent.
 - f. When purchasing public utility services.
 - g. When purchasing products, merchandise, or trademarked goods for resale at an ACHD facility.
 - h. When competitive solicitation is impractical, disadvantageous, or unreasonable under the circumstances.

Upon declaring the Sole Source Expenditure, the ACHD Commission, shall cause the publication of its sole source resolution as a Legal Notice in the Idaho Statesman at least fourteen (14) calendar days prior to the award of the contract.

3. Other Non-Competitive Consideration - Competition Adequacy. Upon receiving a single bid or proposal in response to a solicitation, ACHD shall review the procurement process to determine if all Federal regulations, Idaho Code, and ACHD Policies were adequately addressed. If it is determined that said process was sufficiently competitive, not unduly

restrictive, and in compliance with regulation, law, and policy, ACHD shall proceed with the procurement award.

4. Exemptions. Although Idaho Code 67-2803 allows for procurement exemptions, including Piggyback purchases, 2 CFR 200 does not provide for such exemptions and are therefore, not permissible.

F. Electronic Procurement: For all formal public works construction procurements, ACHD shall process such solicitations by both manual/paper and electronic bidding means. Both manual/paper and electronic bidding shall follow the Formal Procurement requirements under D. above; however, for electronic bidding, the following additional requirements shall be followed:

1. For electronic bids, the Contract Documents shall be available through the Bid Express Web Site at www.bidexpress.com. All electronic Proposals must be submitted via Bid Express. All electronic bidders must first register on the Info Tech Web Site at www.bidexpress.com and create a Digital Identification (D-ID). Registration and D-ID creation are free. It can take up to five (5) business days to process. It is highly recommended that the D-ID be enabled 48 hours in advance of submitting an electronic bid. A fee will be incurred to bid electronically on a pay-per solicitation basis; or, alternatively, bidders may subscribe by month to have access to all solicitations and e-mail notifications.
2. Following the Bid Opening, the Bid Results will be available from Bid Express at www.bidexpress.com and from the ACHD Web Site found at www.achdidaho.org.
3. All questions or clarifications requests concerning the Contract Documents must be posted in the Q&A section of the solicitation located at www.bidexpress.com. All questions or clarifications requests must be submitted by noon on the Monday prior to the Bid Opening. Any interpretation that may alter or change the Contract Documents will be in writing, in the form of Addenda, which will be furnished to all official Plan Holders. Bidders shall acknowledge receipt of Addenda as instructed. A Plan Holders List will be available on both the Bid Express and ACHD Web Sites.
4. All electronic Bids shall be accompanied by the Bid Security and other required documents. If a Cashier's Check or Certified Check is utilized as the Bid Security, then the Check shall be hand-delivered to or sent to and received by ACHD prior to the Bid Opening date and time stated in the ITB. The shipping envelope for the Check Bid Security shall be plainly marked with the Project Name, Contract Number, Bid Opening date and time, and state "Bid Security Enclosed".
5. Bidders are solely responsible to ensure timely submission of their Proposals to ACHD via Bid Express; however, the following disclaimers apply:
 - a. ACHD assumes no responsibility for failure of any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation.
 - b. Neither Bid Express nor ACHD warrant that access to and use of the Bid Express Web Site will be free from interruptions or free from errors, nor shall Bid Express or ACHD be responsible for any inadvertent disclosure of bid repository information or any unauthorized access to bid repository information by third persons.
 - c. In the case of disruption of electronic communications or loss of services by Bid Express within two (2) hours prior to the deadline for submission of bids, ACHD will

delay the deadline for bid submissions to ensure the ability of potential Bidders to submit bids. If this occurs, instructions will be communicated to known Plan Holders.

SECTION 10. CONTRACTING PROCEDURES

Upon the completion of procurement functions, ACHD shall commence Contracting Procedures. Contracting Procedures concern the preparation and award processing of contracts and agreements, therefore, are not Contract Administration/Management.

- A. Contract Preparation Procedures:** PCO Staff shall prepare three (3) original Contracts/Agreements with supporting information, e.g., Award Amount, Contractor/Vendor content, SoW/Specifications, Payment and Delivery Instructions, as applicable. The original Contracts/Agreements shall also include the awarded Bid/Proposal documentation, e.g., Proposal Form, Bid Bond with Power of Attorney, Certifications, Bid Schedule(s), and Addenda.
- B. Notice of Intent to Award Procedures:** The original Contracts/Agreements and a Notice of Intent (NOI) to Award Letter are given to the awarded Contractor/Vendor for execution. The NOI Letter includes the Award Status, Commission Meeting date, if applicable, and instructions to execute with notarization the Contracts/Agreements. Further, the awarded Contractor/Vendor is instructed to submit required documentation such as Insurance Declarations including Workman's Compensation, as applicable; Tax Certification Form; and Performance, Payment, and/or Supply Bonding with Power of Attorney, as applicable.
- C. Award Procedures:** Upon receipt of three (3) executed original Contracts/Agreements and required documentation from the Contractor/Vendor, the PCO staff shall verify the content of the submission and deliver the Contracts/Agreements to the Executive Secretary or the appropriate signing authority to execute on behalf of ACHD. Once fully-executed, the Contracts/Agreements are distributed to appropriate ACHD Staff and the Contractor/Vendor with a Purchase Order, as necessary.
- D. Award Protest Procedures:**
 - 1. Persons wishing to protest a contract award must submit their Protest Notice in writing no less than seven (7) calendar days after Contract Award. Failure of the protestor to specify their objections in writing and in accordance with the specified time deadlines shall constitute a waiver of all right to protest. The Protest Notice shall be mailed, sent electronically, sent via facsimile, or hand delivered to the ACHD, and shall state all issues and facts applicable to the protest. Issues and facts not stated in the Notice of Protest will not be considered. See Idaho Code 67-2805 (2) (b) (x), 67-2805 (2) (b) (xiii), and 67-2806 (2) (i).
 - 2. When Federal assistance is involved, ACHD shall notify the funding source when a contract protest is received and ACHD shall keep the funding source informed concerning the status of the protest. The ACHD Commission will make their decision at a scheduled and noticed meeting, and ACHD will notify the protester of the decision in writing by regular mail, electronically, or by facsimile transmission. The ACHD Commission decision shall be final.
 - 3. For Federally-funded procurements, any appeal of the ACHD Commission decision will be governed by the applicable Federal regulation or its successors. Judicial review of the ACHD Commission decision shall be governed by Idaho Code 40-208. All communications with the parties involved with the protest shall be in writing. ACHD shall be responsible for compiling and maintaining the written protest record which will be open for public inspection.



Federally-Funded Policy and Procedure
Part Two – Contract Administration/Management



Federally-Funded Policy and Procedure

PART TWO – CONTRACT ADMINISTRATION AND MANAGEMENT

SECTION 1. PURPOSE

- A. General.** Following the award and full execution of a Federally-funded Contract or Agreement, herein “Contract”, a series of administration and management actions must be undertaken. These actions are necessary to assure full Contractor/Vendor/Supplier, herein “Contractor”, compliance with all of the Terms and Conditions contained within the Contract. These Contract Administration and Management (CA/M) actions include, but are not limited to, Price and Payment, Progress Monitoring, Inspection and Acceptance, Change Orders and/or Supplemental Agreements, Bonds and Insurance, Quality Control and Assurance, Civil Rights Monitoring, Negotiation and Settlement of Claims, Performance Evaluation, and Termination or Contract Closeout and Warranty Monitoring.
1. During the procurement process outlined in Part One, the Procurement and Contracting Office (PCO) is responsible for stewarding the effort. However, upon award, individual Ada County Highway District (ACHD) Divisions and Departments shall be responsible for the CA/M of Federally-funded Contracts.
 2. Given this transition, all ACHD Division and Department CA/M responsibilities shall be consistent with applicable Federal, State, and ACHD compliance requirements. As such, all ACHD Divisions and Departments shall follow this Part Two Policy and Procedure (P&P) when carrying out their Federally-funded CA/M responsibilities.
- B. Contract Administration and Management Compliance.** In addition to 2 CFR 200, all CA/M shall adhere to applicable state law, primarily Idaho Code, as applicable; and the ACHD Policy Manual. However, it is important to note, this P&P has been prepared using a “the most stringent rule”; that is, when any Federal citation is more restrictive, it is cited and required.
1. When there is a conflict between Federal requirements, including 2 CFR 200, the Uniform Guidance, and Idaho Code and/or the ACHD Policy Manual, ACHD shall follow the Federal law and provisions found in 2 CFR 200, the Uniform Guidance.
 2. However, if Idaho Code and/or the ACHD Policy Manual is more restrictive than the Uniform Guidance and is not clearly pre-empted by Federal law, then ACHD shall follow Idaho Code and/or the ACHD Policy Manual.
 3. In any case, ACHD will refer any questions concerning compliance to its Legal Counsel and/or to the Federal awarding agency, especially when compliance conflicts arise.
 - a. **Fiduciary Responsibility.** All CA/M shall emphasize mitigating risk, improving transparency, and increasing accountability. As part of ACHD due diligence to protect taxpayer funds and other revenue sources from waste, fraud, and abuse, ACHD

shall maintain written standards of conduct governing the performance of its employees engaged in the CA/M processes. See ACHD Policy Manual Section 2513, especially Sections 2512, 2513.5, 2513.6, and 2514.

- b. **Oversight.** On behalf of the ACHD Commission, ACHD Divisions and Departments will oversee, monitor, administer, and manage all Federally-funded Contracts to ensure they are performed in a compliant fashion including consent to the addition of sub-contracts.

SECTION 2. LAW AND REGULATION REFERENCES

- A. **Uniform Guidance.** All references to “Uniform Guidance” made herein are to the Uniform Guidance: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200, published by the Office of Management and Budget (OMB) in the Federal Register on December 26, 2013, and effective beginning on or after December 26, 2014.
- B. **CA/M Requirements under a Federal Award.** ACHD shall comply with the CA/M requirements established in 2 CFR 200, as applicable. ACHD shall also comply with Idaho Code and the ACHD Policy Manual, as applicable.

SECTION 3. COMPLIANCE RESPONSIBILITY AND AUTHORIZATIONS

- A. **Commission Responsibilities.** The ACHD Commission is the authority for all matters in the administration of Federally-funded Contracts/Agreements, and for ensuring compliance with all Federal, State, and local laws and regulations, in consultation with the ACHD Legal Counsel or his/her designee. Federal funding directives or initiatives by the ACHD Commission shall be implemented through the ACHD Director and his administration of ACHD Staff.
- B. **Director Responsibilities.** With ACHD Commission authorization, the ACHD Director has the responsibility to ensure compliance in the CA/M of all Federally-funded actions. The ACHD Director shall assure this CA/M P&P is amended, as needed, to comply with changes to Federal requirements. Any administrative amendments that do not materially change the intent of this P&P are to be performed by the ACHD Director and are authorized by the ACHD Commission.
 1. **Director Authority.** Except as otherwise provided by the ACHD Commission, for all Federally-funded Contracts that ACHD Commission approval has been obtained, either on a project-wide or individual basis, the ACHD Director or his/her designee is authorized to take all steps necessary to administer and manage said Contracts.
 2. **Staff Authority.** The ACHD Director authorization is provided to the ACHD Divisions and Departments for the administration and management of all Federally-funded Contracts. This authorization includes, but is not limited to, the following tasks/actions:
 - a. **Public Works Construction.** In the case of public works construction, ACHD Staff shall adhere to the Capital Projects’ Project Management Guide (PMG) as approved by ACHD Commission Resolution 2090. The PMG shall serve as the primary source of direction and guidance in addressing the CA/M actions cited in Section 1, A. Further, the CA/M of public works construction also involves labor compliance and adherence to Davis-Bacon and Related Acts. This includes, but is not limited to, review and monitoring of Certified Payrolls (WH-347 Forms), conducting On-Site Labor Interviews, and comparisons of findings to the approved Department of Labor Prevailing Wage Rates.

- b. **Contract Price and Payment.** Unless otherwise modified by a change order or a supplemental agreement, the Contract Price and payments against said Price shall be reviewed consistently and timely to ensure prompt payment and compliance with the terms and conditions of the Contract. This review shall ensure there are no duplicative purchases/payments. Concerning advance payment, prior approval from the Federal funding agency is required before advance payment can be made. If local funds are used for an advanced payment before an award has been made or before a letter of no prejudice/written concurrence has been issued, the Federal funding agency will not reimburse the advance payment.
- (1) **Progress Payments Based on Percentage of Completion.** Federally-funded public works construction contracts are authorized to make progress payments based on a percentage or stage of completion of the work. This type of progress payment is standard for construction contracts for all Federal agencies. See 2 CFR 200.305 (b) (3). However, ACHD may not use the percentage of completion method for non-construction Contracts.
 - (2) **Non-construction Contracts.** For non-construction Contracts, progress payments based on costs incurred must be used. When progress payments are used, ACHD shall obtain adequate security for the amount of the progress payment.
 - (3) **Contract Clause.** ACHD shall refer to the Federal Acquisition Regulation (FAR) clause at FAR 52.232-16 for guidance on the specific issues that need to be addressed in the progress payments clause. ACHD shall ensure that the clause adequately covers all important issues including, but not limited to, Computation of Amounts, Liquidation, Reduction or Suspension of Payment, Title, Loss Risk, Subcontractors Progress Payments, Adequate Accounting System and Reports, Access to Records, and Veterans Preference.
- c. **Progress Monitoring.** Progress Monitoring shall be periodic and thorough to ensure that the delivery and/or completion schedules are maintained in accordance with the Contract. If required by Contract, ensure timely receipt of reports and related submissions.
- d. **Inspection and Acceptance.** Inspection and Acceptance of all work, goods, and/or services shall be made at each milestone of the delivery and/or completion schedules. As applicable, Buy America requirements shall also be confirmed during Inspection and Acceptance tasks. Retainage and/or final payments shall not be made until all Inspection and Acceptance tasks are complete.
- e. **Change Orders and Supplemental Agreements.** Written Change Orders and/or Supplemental Agreements are required for any modification(s) of a specification, scope of work, schedule, budget, or other terms and conditions of any Contract, and shall be fully executed by all parties. However, significant change(s) in work, property, or services, commonly called “tag-ons”, that cause major deviation(s) from the original purpose of the work, property, or services, are prohibited. This prohibition also includes significant change(s) in the intended method of achievement or said change(s) that cause a revision of the Contract so extensive, significant, or cumulative that, in effect, the Contractor is required to perform very different work from that described in the original Contract.
- f. **Bonding and Insurance.** During the term of any Contract, regular and periodic review of the status of all Bonds and Insurance that may be required by the Contract

shall be conducted. Said review shall ensure that Bonds and Insurance are full and in effect with Power-of-Attorney and ACHD named as the Additionally-Insured. In the case of public works construction, ACHD requires 100% Performance and Payment Bonding. See Idaho Code 54-1926. Also see 2 CFR 200.325 (b) and (c). In the case of goods and services, a 100% Supply, Janitorial, and/or related Bonding may be required depending on the nature of the work/circumstance.

- g. **Quality Control and Assurance.** The implementation of a Quality Control and Quality Assurance (QC/QA) Plan for each Contract is an effective method to ensure the work, goods, and/or services are being provided in accordance with the Scope of Work and/or Specifications, as may be applicable. It is recommended that the QC/QA Plan include 100% inspection, random sampling, periodic inspection, customer input, as well as other methodologies to ensure compliance.
- h. **Civil Rights Monitoring.** Civil Rights Monitoring involves a range of tasks to include, but not limited to, the review, evaluation, and approval of Disadvantaged Business Enterprise (DBE) subcontracting activities; Contractor Drug-free Workplace and Awareness Program Determinations; and Americans with Disabilities Act (ADA) Compliance.
- i. **Negotiation and Settlement of Claims.** In accordance with good administrative practice and sound business judgment, ACHD alone is responsible for the settlement of all contractual and administrative issues arising out of CA/M. These issues include, but are not limited to, liquidated damages, source evaluation, protests, disputes, and claims. The Standards cited under 2 CFR 200.318 do not relieve ACHD of any contractual responsibilities under its Contracts. The Federal awarding agency will not substitute its judgment for that of ACHD unless the matter is primarily a Federal concern. Violations of law shall be referred to the local, state, or Federal authority having proper jurisdiction. See 2 CFR 200.318 (k).
- j. **Performance Evaluation.** Within thirty (30) days of the completion of any Contract, the ACHD Division or Department Staff assigned to administer said Contract shall prepare an evaluation of Contractor performance in accordance with ACHD Ordinance 221 and ACHD Policy Manual Section 2009.2. Performance Evaluations shall be conducted on Prime Contractors and not Sub-Contractors.
- k. **Termination or Contract Closeout.** With oversight from ACHD Legal Staff, the Division or Department assigned to administer a Federally-funded Contract shall negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience. However, if after the issuance of a Notice to Cure has failed, ACHD Legal Staff shall pursue terminations for Default, Breach, or Cause.
- l. **Warranty Monitoring.** Warranty clauses are important elements of any Contract and can be an Express or Implied, e.g., Implied Warranty of Merchantability or Implied Warranty of Fitness. In any case, a warranty is promise made by a seller to a buyer that is legally enforceable. Monitoring of warranties is important to ensure repair and/or replacement costs are correctly assigned during the warranty term. For example, ACHD warranty for public works construction is two (2) years. In addition, premature repair/modification of products can void otherwise serviceable warranties.

SECTION 4. COMPLIANCE DOCUMENTATION

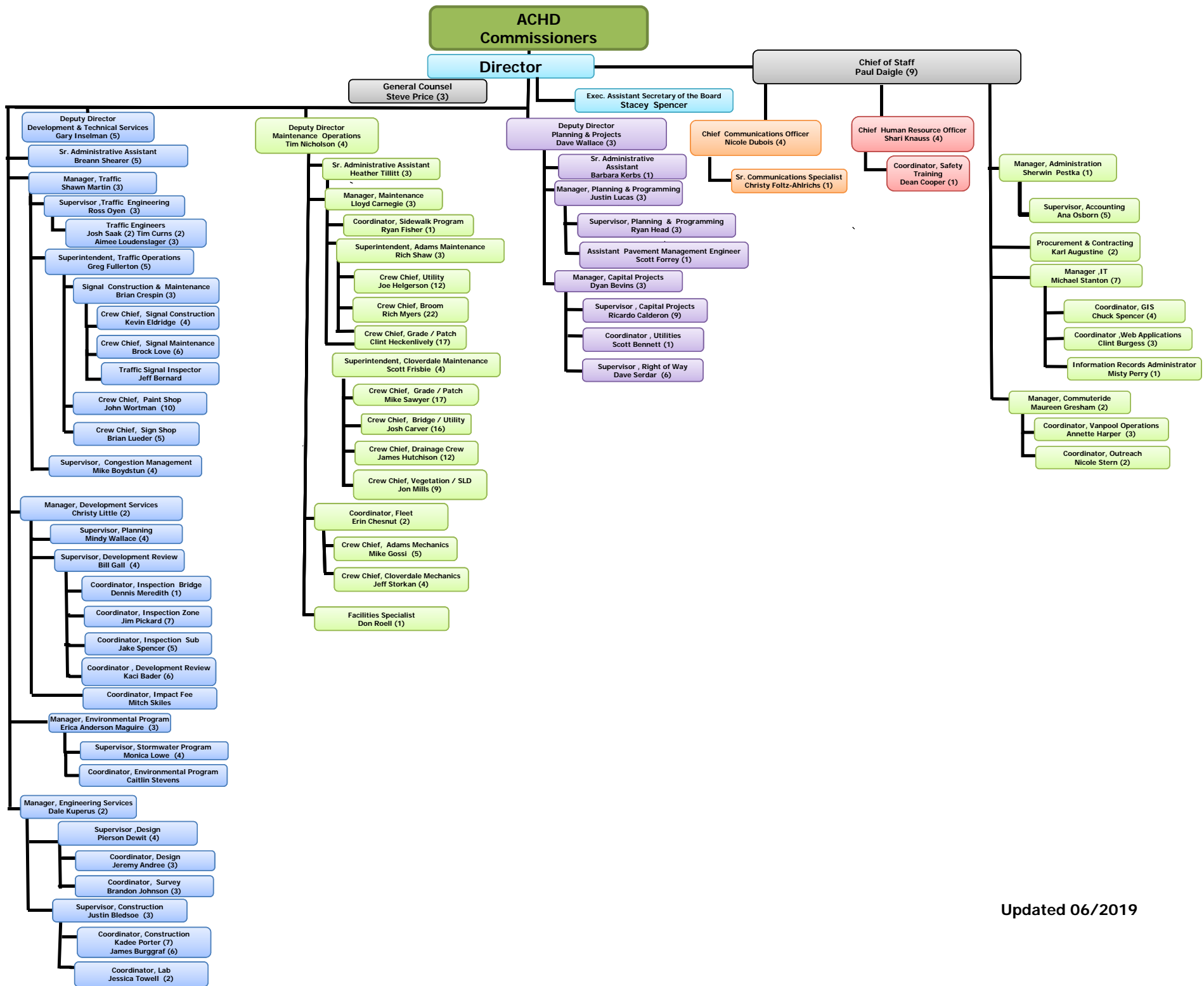
A. Contract File. CA/M is the post-award stewardship of a Contract to ensure compliance with

the Terms and Conditions of the Contract by both the Contractor and ACHD. To this end, every Contract requires the establishment of a Contract File to serve as the repository for all pertinent CA/M compliance documentation.

1. **Contract File Documentation.** The documentation contained in the Contract File shall be maintained by the ACHD Divisions and Departments assigned to provide CA/M for Federally-funded projects and programs.
 - a. Generally, the Contract File shall contain a range of content concerning all decisions made related to their CA/M activities. This shall include, but not be limited to, the executed contract and notice of award; Notice to proceed; post-award actions and correspondence taken by the contracting parties in accordance with the requirements of the Contract; compliance and contractual matters requiring completion or approval; payment requests submitted, reviewed, approved, and processed; and contractual and administrative issues in dispute that have been settled in accordance with good administrative practice and sound business judgment.
 - b. The Contract File shall also include documentation concerning surplus disposition. ACHD shall be responsible for the disposition of all Federally-funded surplus land, facilities, equipment, materials, and properties. The Divisions and Departments assigned to oversee Federally-funded Contracts shall make recommendations to the ACHD Commission as to the surplus land, facilities, equipment, materials, and properties to be disposed. This recommendation shall describe the best method of disposal that will yield the highest net return and comply with state and Federal requirements. See Idaho Code 40-1309 and 67-5732A.
 - c. Further, in that any Contract involving the expenditure of Federal funds will be subject to review and audit during and after performance, the Contract File documentation shall demonstrate that ACHD Divisions and Departments and the Contractor complied with the terms and conditions of the Contract and shall support the test of audit and review by the Federal funding agency.
 - d. Contract Files will be kept for five years See Idaho Code 40-1337. Also See 2 CFR 200.333.
2. **Contract Provisions.** All Contracts shall contain provisions required by ACHD and 2 CFR 200, Appendix II. Each Contractor shall extend those provisions to its subcontractors to the extent required by applicable laws and regulations. In all cases, ACHD shall provide its Legal Counsel with all Contract provisions and clauses which comply with then-current 2 CFR 200, Appendix II. ACHD Divisions and Departments assigned to provide CA/M for Federally-funded projects and programs shall review their Contract to ensure that said provisions and clauses are contained therein.



Federally-Funded Policy and Procedure
ACHD Organizational Chart





Federally-Funded Policy and Procedure

2 CFR 200 - Appendix II

**APPENDIX II TO PART 200
CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS
UNDER FEDERAL AWARDS**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the formal thresholds of \$100,000 for goods and services, and \$200,000 for public works construction as established in Idaho Code 67-2806 (2) and Idaho Code 67-2805 (2) respectively, which are more restrictive than the Federal Simplified Acquisition Threshold (SAT) of \$250,000 as established by Section 805 of PL 115-19 adopted on 12/12/17, 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 for 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 by 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 current 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 "AntiKickback" 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 subrecipient 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 and 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 basic 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 subrecipient 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 that “funding agreement,” the recipient or subrecipient 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. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 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 policies 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 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, 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.



**Federally-Funded Policy and Procedure
Micro-Purchase and Simplified Acquisition Threshold Changes**



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
FINANCIAL MANAGEMENT

June 20, 2018

M-18-18

MEMORANDUM FOR CHIEF FINANCIAL OFFICERS AND HEADS OF SMALL EXECUTIVE AGENCIES

FROM:

Tim Soltis

Deputy Controller, Office of Federal Financial Management

SUBJECT:

Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance

In accordance with recent statutory changes set forth in the National Defense Authorization Acts (NDAA) for Fiscal Years 2017 and 2018, this memorandum raises the threshold for micro-purchases under Federal financial assistance awards to \$10,000, and raises the threshold for simplified acquisitions to \$250,000 for all recipients. Further, it implements an approval process for certain institutions that want to request micro-purchase thresholds higher than \$10,000. Agencies are required to implement these changes in the terms and conditions of their awards, and recipients of existing Federal financial assistance awards may implement them in their internal controls.

Background

This memorandum applies to all Federal agencies, as defined at 5 U.S.C. § 551(1), that award grants or cooperative agreements. It implements changes to the micro-purchase and simplified acquisition thresholds for financial assistance under the NDAA for Fiscal Year (FY) 2017 and FY2018. The micro-purchase threshold refers to purchases of supplies or services using simplified acquisition procedures, not to exceed an established amount pursuant to the Office of Management and Budget (OMB) Governmentwide Guidance for Grants and Agreements (“Uniform Guidance”) at 2 C.F.R. § 200.67 (Micro-purchase). The simplified acquisition threshold refers to purchases of property or services using small purchase methods not to exceed an established amount pursuant to 2 C.F.R. § 200.88 (Simplified acquisition threshold). For Federal financial assistance awards, these purchases are acquired for use by a Federal program. The NDAA for FY2017 increased the micro-purchase threshold from \$3,500 to \$10,000 for institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations or independent research institutes (41 U.S.C. § 1908). The NDAA for FY2018 increases the micro-purchase threshold to \$10,000 for all recipients and also increases the simplified acquisition threshold from \$100,000 to \$250,000 for all recipients.

Implementing the NDAA for FY2017

Section 217(b) of the NDAA for FY2017 raises the micro-purchase threshold to \$10,000 for procurements under grants and cooperative agreements for institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations or independent research institutes.¹

¹ Pub. L. No. 114-328 (codified at 41 U.S.C. § 1902(a)(2)).

The NDAA for FY2017 also establishes an interim uniform process by which these recipients can request and Federal agencies can approve requests to apply a higher micro-purchase threshold. Specifically, the 2017 NDAA allows a threshold above \$10,000 if approved by the head of the relevant executive agency. For purposes of this approval, the institution's cognizant Federal agency for indirect cost rates will be the relevant executive agency as defined in 2 C.F.R. § 200.19 (Cognizant agency for indirect costs). To receive a higher threshold, the institution must either have "clean single audit findings" (*i.e.*, in accordance with 2 C.F.R. § 200.520 - Criteria for a low-risk auditee), have an acceptable internal institutional risk assessment, or the higher threshold must be consistent with State law for public institutions.

Agencies should reflect this change through policy or terms and conditions in awards for those institutions. The effective date for this change was when the NDAA for FY2017 was signed into law on December 23, 2016. OMB intends to revise the Uniform Guidance to conform with the law.²

Process for Requesting a Higher Threshold Under the NDAA for FY2017

Requests for approval should be submitted to the institution's cognizant Federal agency for indirect cost rates; however, institutions should contact the agency before sending the request to determine the correct point of contact. The cognizant Federal agency will assign review of the request to the appropriate office within the agency to determine whether to approve, and will maintain records and justification of all approvals. The request should include the threshold level being requested and the justification(s) for it based on the criteria above per Section 217(b) of the NDAA for FY2017.

Implementing the NDAA for FY2018

This memorandum also implements provisions of the NDAA for FY 2018, Pub. L. No. 115-91, which became law on December 12, 2017. Specifically, section 806 raised the micro-purchase threshold from \$3,500 to \$10,000, and section 805 raised the simplified acquisition threshold from \$100,000 to \$250,000. Pursuant to 2 C.F.R. § 200.67 (Micro-purchase) and 2 C.F.R. § 200.88 (Simplified acquisition threshold), these higher thresholds are not effective until implemented in the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 2.1 (Definitions).³

In order to allow maximum flexibility for grant recipients in light of the changes to the NDAA for FY2018, OMB is granting an exception allowing recipients to use the higher threshold of \$10,000 for micro-purchases and \$250,000 for simplified acquisitions in advance of revisions to the FAR at 48 C.F.R. Subpart 2.1 and the Uniform Guidance. Pursuant to 2 C.F.R. § 200.102 (Exceptions), OMB may allow exceptions to the Uniform Guidance when exceptions are not prohibited by statute. The exception takes effect upon the date of issuance of this memo. Agencies should apply this exception to all recipients. Recipients should document any change based on this exception in accordance with 2 C.F.R. § 200.318 (General procurement standards).

If you have any questions regarding this memorandum, please contact Mary Tutman at Mary.E.Tutman@omb.eop.gov or Gil Tran at Hai_M._Tran@omb.eop.gov.

² The American Innovation and Competitiveness Act, Pub. L. No. 114-329, § 207(b) (2017) states that the Uniform Guidance shall be revised to conform with the requirements concerning the micro-purchase threshold.

³ Codified at 41 U.S.C. § 1902(f).



Federally-Funded Policy and Procedure
ACHD Resolution 2256

RESOLUTION NO. 2256

BY THE ADA COUNTY HIGHWAY DISTRICT BOARD OF COMMISSIONERS: SARA M. BAKER, REBECCA W. ARNOLD, JIM D. HANSEN, KENT GOLDTHORPE AND PAUL WOODS

A RESOLUTION PROVIDING FOR THE ADOPTION OF PROCUREMENT AND CONTRACT MANAGEMENT POLICY AND PROCEDURE GUIDE FOR FEDERALLY-FUNDED PURCHASES OF GOODS, SERVICES AND CONSTRUCTION PROJECTS

WHEREAS, pursuant to Idaho Code §§ 40-1310 and 40-1406, the Commissioners of the District have the authority to manage and conduct the business and affairs of the District, make and execute all necessary contracts, contract for the construction, use, maintenance, repair and improvement of highways within its system; and

WHEREAS, Ada County Highway District has authority to adopt ordinances, rules, regulations, internal policies as necessary, for carrying into effect and discharging all powers and duties conferred to a single county-wide highway district pursuant to Idaho Code, chapter 13 and chapter 14 of Title 40; and

WHEREAS, the procurement of goods, services and public works construction is governed by Title 67, Chapters 23 and 28, Idaho Code; and

WHEREAS, pursuant to Idaho Code § 67-2801, the efficient and cost effective procurement of goods, services and public works construction is an important aspect of local government operations and local government should endeavor to procure goods, services and public works construction by way of a publicly accountable process that respects the shared goals of economy and quality; and

WHEREAS, Ada County Highway District occasionally utilizes monies from federal grant awards in funding the purchase of goods, services, and construction projects and in such cases is required to be in compliance with federal law, federal regulations including but not limited to 2 CFR 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”), state law and ACHD policy; and

WHEREAS, 2 CFR §200.318 of the Uniform Guidance requires that recipients of federal grant awards “use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements confirm to applicable Federal law and the standards identified in this section” and that they “maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of [federally funded] contracts”; and

WHEREAS, in an effort to ensure compliance with the Uniform Guidance, Ada County Highway District staff has developed an Ada County Highway District Federally-

Funded Procurement Policy and Procedure Guide (“Guide”) providing policies and procedures for procurement and contract management of federally-funded purchases of goods and services and construction projects. (A true and correct copy of the Guide is attached hereto as Appendix “A” and incorporated by reference); and

WHEREAS, the objective of the Guide is to provide internal guidelines to ensure that procurement and management of federally-funded purchases of goods, services, and construction projects is done in compliance with federal law, federal regulations including but not limited to the Uniform Guidance, state law and ACHD policy; and

WHEREAS, the Guide was developed to allow future adjustments and improvements through a continuous evaluation and revision; and

WHEREAS, the Guide applies to all of ACHD’s federally-funded purchases of goods, services, and construction projects and identifies the internal area of responsibilities and activities that are assigned and performed in carrying out and managing such purchases and projects.

NOW, THEREFORE, BE IT RESOLVED

First, that it is in the best interest of the citizens of Ada County, Idaho, for the Ada County Highway District Board of Commissioners to adopt and implement the Ada County Highway District Federally-Funded Procurement Policy and Procedure Guide (“Guide”) and said Guide is hereby adopted; and

Second, that the Guide shall be an exhibit to the ACHD General Administration Policy which is set forth in the ACHD Internal Policy Manual at Section 2000 *et seq.* and shall supplement Section 2009 through Section 2020 of the ACHD Internal Policy Manual; and

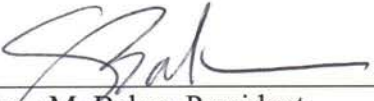
Third, that the Director of the Ada County Highway District and Chief of Staff are hereby authorized to effect any necessary adjustments, modifications and improvements to the Guide that are developed through continuous evaluation and revision of the Guide on an “as-needed” basis; and

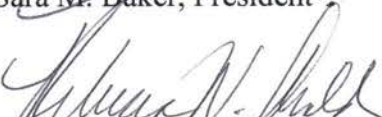
Fourth, that annually, or at any time upon the request of the Commission, the Director and Chief of Staff shall provide a review of any adjustments, modifications and improvements to the Guide; and


Fifth, that the Guide shall be in full force and effect on and after October 1, 2018.

Adopted and approved by the Board of Commissioners of the Ada County Highway District on the 26th day of September, 2018.

BOARD OF HIGHWAY DISTRICT COMMISSIONERS OF
ADA COUNTY, IDAHO:


Sara M. Baker, President


Rebecca W. Arnold, Vice President


Jim D. Hansen, Commissioner


Kent Goldthorpe, Commissioner


Paul Woods, Commissioner