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**U. S. Department of Justice**  
**Office of Justice Programs**  
*Office of the Chief Financial Officer*

# **GUIDE TO PROCUREMENT PROCEDURES**

## **FOR RECIPIENTS OF DOJ GRANTS AND COOPERATIVE AGREEMENTS**



**June 2011**

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## Introduction

This document is intended for use by recipients of Federal financial assistance program funds administered by the Office of Justice Programs (OJP). This guide is based on the procurement standards contained in the Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Units of Government, codified at [Title 28 CFR Section 66.36 \[PDF-156Kb\]](#) known as the “Common Rule” and Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, codified at [Title 28 CFR Section 70.44 \[PDF-132Kb\]](#), known as the “NP Common Rule.” This guideline should be used in conjunction with the [OJP Financial Guide](#) and provides guidance to implement procurement requirements in the referenced regulations.

## Chapter 1

### Evolution of a Requirement

***Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items.***

Grant applications may include grantee subcontracting to accomplish parts of a project when equipment or materials are required or when the prospective grantee does not have the necessary in-house expertise to accomplish a programmatic goal or objective. Dollar estimates for contracting effort are determined and included in the grant application. The preliminary decision to contract is based upon the grantee's best knowledge of the project requirements. Front-end logistics planning is necessary in order to avoid any duplication of effort, specifically prohibited by Government regulations.<sup>1 2</sup>

- States should follow the same procurement procedures they use for procurements for their non-Federal programs.
- Other grantees and subgrantees should establish written policies and procedures that follow the procurement standards contained in the Administrative rules referenced in the Introduction.

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<sup>1</sup> Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Units of Government, codified at Title 28 CFR Section 66.36(b)(4), 7/1/2010 edition, known hereafter as the "Common Rule."

<sup>2</sup> Uniform Administrative Requirement for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations, codified at Title 28 CFR Section 70.44(a)(1), 7/1/2010 edition, known hereafter as the "NP Common Rule."

## Chapter 2

### The Procurement Package

Detailed in-house planning is necessary in order to effectively award a contract, therefore, there should be an agreement among grantee personnel concerning details of any proposed contract.

If competitive sealed bidding is to be used and the contract is to be awarded on a fixed-price basis to the lowest responsible and responsive bidder, then complete, clear and accurate design specifications should be developed. When the proposed contract is to be negotiated, Statements of Work (a general description of what is needed) are used.

The checklist below lists the types of documents that should be completely developed before the procurement action begins.

#### Pre-Procurement Documentation Requirements:

- ✓ Requisition.
- ✓ Statement of Work (negotiation), or Competitive, Sealed Bidding (include design specifications, if required).
- ✓ Negotiation (include evaluation criteria).
- ✓ Sole Source Contracting:<sup>3</sup> Sole Source Justification Statement.
- ✓ All concurrences that may be required.

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<sup>3</sup> Includes emergency purchases/direct buy.



## Contracting Planning Procedures Checklist

No.	Question	Yes	No
1.	Are grant funds available to fund the proposed contract?	<input type="checkbox"/>	<input type="checkbox"/>
2.	Has a market survey been conducted and documented to determine if there are contractors available to satisfy the requirement?	<input type="checkbox"/>	<input type="checkbox"/>
3.	Have in-house delegations been made for grantee contractual responsibility?		
	Administrative	<input type="checkbox"/>	<input type="checkbox"/>
	Technical/Project	<input type="checkbox"/>	<input type="checkbox"/>
4.	Has the procurement method been determined?		
	Small Purchases	<input type="checkbox"/>	<input type="checkbox"/>
	Competitive, Sealed Bidding	<input type="checkbox"/>	<input type="checkbox"/>
	Negotiation	<input type="checkbox"/>	<input type="checkbox"/>
	Sole Source Contracting	<input type="checkbox"/>	<input type="checkbox"/>
5.	Has the Statement of Work been developed?		
	Design Specifications for a Competitive, Sealed Bid, or	<input type="checkbox"/>	<input type="checkbox"/>
	Statement of Work for a Negotiated contract	<input type="checkbox"/>	<input type="checkbox"/>
6.	If the contract is to be competitively negotiated, have Evaluation Criteria been developed?	<input type="checkbox"/>	<input type="checkbox"/>
7.	If the contract is to be negotiated on a sole source basis, has a Sole Source Justification been prepared? (See Chapter 9)	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 3

### Competition

***All procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition.<sup>4 5</sup>***

In order to ensure maximum open and free competition, bidders' lists should be maintained and updated, as required. Some organizations maintain a "Prequalified Bidders List", i.e., prospective bidders are prequalified as to material, equipment, and services before they are placed on the bidders' list. If not administered properly, the prequalification may in some instances be counter to open and free competition. Accordingly, prequalified bidders' lists may be used if they are current and include enough qualified sources to ensure adequate competition. In addition the grantee must allow prospective bidders the opportunity to become "qualified" during the solicitation period.<sup>6</sup>

Advertising of competitive requirements in local newspapers and trade publications is important in order to achieve more effective competition.

Local preference laws/ordinances have always required special attention by grantor agency when there are Federal dollars involved. Therefore,

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***TIP: Respondents/bidders should be advised that they must have the organizational capacity to conduct the work, and that advertiser will not pay for travel, lodging, or per-diem unless specifically mandated in the requirements.***

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***Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals...<sup>7</sup>***

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<sup>4</sup> Common Rule, Title 28 CFR Section 66.36 (c).

<sup>5</sup> NP Common Rule, Title 28 CFR Section 70.43.

<sup>6</sup> Common Rule, Title 28 CFR 66.26 (c) (4).

<sup>7</sup> Common Rule, Title 28 CFR 66.26 (c) (2).

## Competition Checklist

No.	Question	Yes	No
1.	<p>Has the bidders list or a market survey been reviewed to determine availability of competitive contractors?</p> <p>If the answer is “No,” a review shall be done to determine the availability of competitive contractors in the market place.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Does the Statement of Work contain attributes conducive to an “open and free competition?”</p> <p>If the answer is “No,” the restrictive parts should be rewritten.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Has an “advertising” strategy been developed to allow prospective bidders ample time to request a copy of the solicitation and respond accordingly?</p> <p>If the answer is “No,” grantees should ensure that ample time for advertising is included when determining the forecasted award date.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## **Chapter 4**

### **Methods of Procurement**

The established methods of procurement are as follows:

- Interdepartmental Transfer of Funds (Chapter 5)
- Small Purchases (Chapter 6)
- Competitive Sealed Bidding (Chapter 7)
- Negotiation (Chapter 8)
- Sole Source Contracting (Chapter 9)

Details are included in the above indicated chapters.

When determining whether a requirement should be competitively bid (sealed bidding) or negotiated, the requirements play a major role in arriving at this decision. The two basic ways to define procurement requirements are:

- Competitive Sealed Bidding (Design Specifications – see Chapter 7), and
- Negotiation (Statement of Work – see Chapter 8).

## Chapter 5

### Interdepartmental Transfer of Funds

(Normally applies to State and Local Governments)

In certain instances a viable method to satisfy a requirement is the transfer of funds to another unit of the organization where the capability exists to supply the needed goods or services. This can be accomplished under the following conditions:

1. When another part of the grantee organization (for example, in the case of a State or local government) has the in-house capability to satisfy the requirement;
2. When the State or local government has an existing contractor currently performing that could effectively satisfy the requirement; or
3. When, occasionally, programmatic or funding statutes may mandate the transfer of funds through a grantee to another organization.

Transfer of funds to another unit within the organization may offer the following advantages:

- Valuable procurement lead-time can be saved due to the simplicity of the funds transfer action.
- Preparation of a Statement of Work and all the requirements of an Invitation for Bid or Request for Proposal are not necessary.

## Interdepartmental Transfer of Funds Checklist

No.	Question	Yes	No
1.	<p>Is there an existing contract within your organization that can satisfy the requirement?</p> <p>If the answer is "Yes," use of an existing contract to the incumbent may be considered and funds transferred.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Can another department within your agency logistically satisfy your requirement? (This generally applies to State and local governments).</p> <p>If the answer is "Yes," funds for accomplishment of the requirement may be transferred to that department.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 6

### Small Purchases

***Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold (currently set at \$100,000).<sup>8</sup>***

This method is an important part of the logistics support function. Simplified informal procedures to cut down procurement lead time for day-to-day support items should be utilized. Simplified procedures may include the following:

1. **Telephone Solicitations (normally for local vendors).** Price quotes are received by telephone or electronically. At least 3 vendors should be solicited and price, availability, delivery, etc., should be requested. The purchase order is then awarded to the vendor quoting the lowest price, including consideration of all other factors. Supporting documentation must be maintained in the purchase order file and include the date contacted, vendors contacted, and quoted amounts and quantities.

**Informal Written Quotations (not advertised).**

This procedure applies to more complex low dollar items when a quote in writing is desirable.

Purchase Order Award is made to the vendor

quoting the lowest price and meeting the technical requirements. Supporting documentation must be maintained that is similar to that for telephone solicitations.

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***TIP: Recipients must follow their own threshold policy limitations if they do not exceed the Federal threshold.***

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2. **Blanket Purchase Agreements and Credit Cards.** Blanket Purchase Agreements (BPAs) may be described as a "Charge Account" where a vendor accommodates frequent recurring requirements. Recipient should have documented procedures that include control limits, authorized users and approving officials. Orders are placed against the BPA and the agreed-to-discount is included on the resulting invoice. Normally, billings are made by the vendor on a monthly basis. Caution should be taken to ensure discipline in assigning authority to purchase. Orders should be placed to satisfy only legitimate grant requirements.

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<sup>8</sup> Common Rule 66.36 (d) (1).

3. **Imprest Fund (Petty Cash Fund).** Paying cash for small dollar purchases is a viable way to accommodate small dollar requirements. There is only one overriding prerequisite for successful operation of the fund: Strict Dollar Accountability. Only designated personnel shall be given safe access and combination numbers. Any change in designated personnel requires a change in the safe combination. Cash advances may be made and reconciled with a paid invoice at the completion of the purchase. Documented policy and procedures are needed including approving officials and periodic audits of the fund.



## Small Purchases Checklist

No.	Question	Yes	No
1.	<p>Is the estimated cost of the requirement below the established simplified acquisition threshold?</p> <p>If the answer is “Yes,” a purchase order may be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Are there available local vendors that may logistically satisfy the requirement?</p> <p>If the answer is “No,” consider additional lead-time required to solicit vendors outside the local area.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>May the requirement be satisfied by an existing “Blanket” purchase agreement?</p> <p>If the answer is “Yes,” use the existing Blanket Purchase Agreement.</p> <p>If the answer is “No,” conduct a solicitation in accordance with grantee procedures.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>Has the requirement been “split” to be below the mandatory purchase agreement monetary level? (Order splitting, an unallowable practice, is reducing an order below the small purchase threshold to avoid a more complex procurement method.)</p> <p>If the answer is “Yes,” another method must be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 7

### Competitive Sealed Bidding

***Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.<sup>9</sup>***

Competitive Sealed Bidding is recognized as the preferred method of procurement and is properly used when the following conditions exist:

1. The requirement can be described and is finite and specific in detail, i.e., no unknowns or no contingencies. The contract will be awarded to the
  - a. **lowest** (fixed price),
  - b. **responsive** (the bid meets all the requirements of the solicitation including design specifications), **and**
  - c. **responsible bidder** (the contractor has the capability in all respects) **that can accomplish the contract requirements.**
2. There are two or more contractors that could satisfy the requirement and are willing and able to compete for the contract.
3. There is enough time available to issue the solicitation, conduct a public bid opening, and award a firm fixed-price contract to the lowest responsive and responsible bidder.
4. The requirement to hold “negotiations/discussions” is not necessary and does not exist.

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<sup>9</sup> Common Rule, 28 CFR 66.36 (d) (2).

## Competitive Sealed Bidding Checklist

No.	Question	Yes	No
1.	<p>Is it possible to describe the requirement in exact terms (design specifications) so the contractor can “fix price” the bid?</p> <p>(Note: If a contractor must provide a deliverable for a fixed price where “unknowns” are involved, contingency dollars usually are included in the price. Then, if these contingencies do not generate or occur, the material/service may be overpriced.)</p> <p>If the answer is “Yes,” an Invitation for Bid (IFB) utilizing competitive Sealed Bidding procedures may be effectively used and the award made to the lowest responsive and responsible bidder.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Can it be expected that “advertising” will result in two or more responses to the solicitation?</p> <p>If the answer is “Yes,” consider use of an Invitation for Bid (IFB).</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 8

### Negotiation

***Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.<sup>10</sup>***

Procedures involve the following:

1. Develop a Statement of Work listing essential requirements to accomplish the contract, i.e., in the case of a desired service, spell out the particular problem to be solved, but do not mandate the approach the contractor must take unless fulfilling statutory mandates. The Statement of Work (SOW) should be written in a straightforward manner, and, as a minimum, should contain the following:
  - a. Background providing necessary introductory information or evolution of the requirement.
  - b. Objectives/scope of work detailing broad parameters that are requisite for contract performance to effectively satisfy the requirement. (Note: Do not mandate in detail how the contractor should satisfy the objectives of the contract. Performance measures must be used to ensure the quality of the outputs/outcomes.)
  - c. A list of tasks with accompanying deliverables, organized in a logical sequence as the grantee perceives the requirement.
  - d. A delivery schedule in increments as required to satisfy the requirement. The schedule may include performance bonuses for early completion and penalties for late delivery.
  - e. Acceptance and approval procedures should be indicated.
  - f. Other coverage as may be required:
    - i. References, licensing, and professional certifications.
    - ii. Grantee furnished items;
    - iii. Packing and shipping.
    - iv. Any other points that require coverage.
2. Develop the Request for Proposal (RFP) containing at least the basic elements specified on the next page, and before release, advertise the solicitation in accordance with local procedures.

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<sup>10</sup> Common Rule, 28 CFR 66.36 (d) (3).

3. The Request for Proposal (RFP) normally will contain the following:
- a. Letter of Transmittal (or local standard form) providing certain relevant details concerning the requirement.
  - b. A delivery schedule to be included in the definitive contract, including all necessary administrative details.
  - c. The Statement of Work (see no. 1 on the previous page).
  - d. Required special and mandatory clauses (Reference: Chapter 10).
  - e. Any special instructions to offerors to assist in developing the offer.
  - f. A listing of evaluation criteria to be used by the grantee in the evaluation of the offers received. Percentage weights may be assessed each criterion or the order of importance of each indicated criterion may be shown.
  - g. Any other information that may be required for the offerors to completely understand the contents and intent of the Request for Proposal.
  - h. A due date and time frame for receipt of all proposals.
4. Proposal evaluation of the offers received resulting from the RFP shall be accomplished in accordance with grantee procedures. Each proposal shall be scored based upon the evaluation criteria contained in the RFP. Evaluation criteria shall not be changed after receipt of offers.
5. Negotiations shall be conducted with those offerors submitting the most promising proposals in accordance with the determination of a selection official designated by the grantee for that purpose. Issues (unforeseen requirements) raised during the negotiation phase by one respondent may be communicated to all remaining offerors, so that all may respond to the issue during the best and final phase of the negotiations.
- 
- TIP: Clauses for bonuses for early completion and penalties for late delivery may be developed if they are in the public interest. Clauses may be added to the contract to cover these points. Also a prior approval key-personnel clause may be needed for personal services to ensure that qualified individuals are employed.*
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## Negotiation/Competitive Proposal Checklist

No.	Question	Yes	No
1.	<p>Is it necessary to resolve technical questions/unknowns by negotiations with the successful contractor?</p> <p>If the answer is "Yes," this requirement is a candidate for negotiation/the competitive proposal process.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Is it necessary to develop a Statement of Work, instead of a Design Specification spelling out finitely what is needed?</p> <p>If the answer is "Yes," negotiation should be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 9

### Sole Source Contracting

As indicated in Chapter 3, grantees are mandated to compete contractual requirements. However, there are exceptions to the prime rule of competition. These exceptions result in “sole source” contracting.

***Procurement by noncompetitive proposals is procurement through the solicitation from only one source, or after solicitation of a number of sources, competition is determined inadequate.<sup>11 12</sup>***

The Administrative Rules are quite clear regarding the necessity to have open and free competition to satisfy grantee contractual requirements.

Grantees may make the initial determination that competition is not feasible if one of the following circumstances exists:

1. The item of service is available only from a single source (see page 23 for the format to be submitted to grantor agency for approval).
2. The public exigency or emergency for the requirement will not permit a delay resulting from a competitive solicitation.
3. After solicitation of a number of sources, competition is considered inadequate.

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***TIP: Grantor agency consent is required for all proposed sole source contracts over \$100,000.***

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In any event, documentation reflecting actions taken and the position of the grantee is extremely important in order to establish an audit trail.

The following issues should be considered when formulating the decision to request consent to sole source:

1. **Bidders List.** Grantees should continually develop and maintain a bidders list by functional category. Procedures should be developed for updating the bidders list in order that it may be kept current.

Removal from the bidders list is justified when a pattern of continual “no response” is indicated. If the bidders’ list is not considered adequate, a market survey of the market place should be conducted.

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<sup>11</sup> Common Rule, 28 CFR 66.36 (d) (4).

<sup>12</sup> NP Common Rule, 28 CFR 70.44 (e) (2).

2. **Time Frames.** Can it unequivocally be shown that desired time frames for delivery must be met or the entire project will suffer? Because short delivery schedules sometimes stifle competition, provide sufficient documentation to support the short schedule.



Example

A grantee agency has developed an Integrated Information Sharing System which has the potential for being the national model throughout the United States and other countries. In order for the system to gain national recognition, the grantee agency needs a vendor who possesses national known expertise in creating a well designed information system. If deadline dates are not met, the impact on the program would be that other agencies will run the risk of repeating/duplicating previous mistakes encountered by agencies with failed Integrated Information Sharing Systems.



The following page contains a format to be followed when requesting consent from the grantor agency to contract sole source.



## Justification for Non-Competitive Procurement

### Sample Format

Paragraph	Content
1	A brief description of the program and the product or service being contracted.
2	<p>Explanation of why it is necessary to contract non-competitively, to include the following:</p> <ul style="list-style-type: none"><li>• Expertise of the contractor</li><li>• Management</li><li>• Knowledge of the program</li><li>• Responsiveness</li><li>• Expertise or experience of personnel</li><li>• Results of market survey determining competition availability (or if one was not conducted, why not?)</li></ul>
3	<p>Time Constraints –</p> <ul style="list-style-type: none"><li>• When contractual coverage is required, and why</li><li>• Impact on program if dates are not met (make sure to include the financial impact in dollars)</li><li>• How long it would take for another contractor to reach the same level of competence (equate in dollars, if desired)</li></ul>
4	Uniqueness
5	Any other points that should be covered to “sell the case.”
6	Declaration that this action is in the “best interest” of the grantor agency and/or the Federal Government.

## Chapter 10

### Contract Provisions

Federal regulations require that contracts awarded by grantees contain the clauses enumerated below. Grantees may develop language suited to accommodate a specific contractual situation, providing such clauses meet the intent of the Federal guidelines.

1. **Disputes.** For contracts over the small purchase threshold (currently \$100,000), this clause should provide contractor recourse procedures in the event there is a contractual dispute. The dispute submitted by the contractor shall be in writing to the contracting officer (person signing the contract for the grantee). Procedures shall provide at least one additional upper management level for review within the grantee organization. The reply from the grantee shall be in writing and include general counsel concurrence (optional).

*Reference: Common Rule, 28 CFR 66.36 (I) (1) and NP Common Rule, 28 CFR 70.48 (a).*

2. **Reporting.** Any applicable reporting requirements affecting contractual activity in order to comply with requirements of the grant should be included as a special contract clause developed by the grantee. Of particular importance are Progress/Status/Performance reports (usually on a semi-annual basis) required for contracts for research and development, studies, surveys, analyses, etc. Progress reports also play an important role in equating progress to payments or cost reimbursement contracts.

*Reference: Common Rule, 28 CFR 66.36 (I) (7).*

3. **Patents.** Any discovery or invention that arises during the course of the contract shall be reported to the grantee. This clause should require the contractor to disclose promptly inventions to the contracting officer (within 2 months) after the inventor discloses it in writing to contractor personnel responsible for patent matters. The awarding agency shall determine how rights in the invention/discovery shall be allocated consistent with "Government Patent Policy" and 37 CFR Part 401.

*Reference: Common Rule, 28 CFR 66.36 (I) (8) and NP Common Rule, Appendix A to Part 70, 5.*

4. **Rights in Data and Copyrights.** As a general rule, grantee contracts that require data to be produced, furnished, acquired or specifically used in meeting contract requirements must contain terms that delineate the respective rights of the grantee and the contractor regarding use, duplication, and disclosure of such data. Generally OJP reserves a right to use copyrighted material for Federal government purposes. See the OJP Financial Guide for details.

*Reference: Common Rule, 28 CFR 66.36 (I) (9).*

5. **Examination of Records.** This clause shall state that the grantee, the subgrantee, the Federal grantor agency, the Comptroller General, or any of their representatives shall have access to any books, documents, papers and records of the contractor which are directly pertinent to the grantee contract for the purpose of making audit, examination, excerpts, and transcriptions. The clause shall further state that the contractor shall retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

*Reference: Common Rule, 28 CFR 66.36 (I) (10) (11) and NP Common Rule, 28 CFR 70.48 (d).*

6. **Clean Air and Water.** If the contract exceeds \$100,000.00, the grantee's contractor must agree to comply with all requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), and the Clean Water Act [Federal Water Pollution Control Act] (33 U.S.C. 1251 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) relating to inspection, monitoring, entry, reports, and information as well as other requirements specified.

*Reference: Common Rule, 28 CFR 66.36 (I) (12) and NP Common Rule, Appendix A to Part 70, (6).*

7. **Equal Employment Opportunity.** This clause applies to contracts over \$10,000.00. Contracts shall comply with Executive Order 11246 and shall contain provisions that the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, and disability. Also they shall not discriminate in the delivery of services or benefits on the basis of race, color, national origin, religion, sex, disability, and age. In addition, all recipients must comply with Limited English Proficiency (LEP) guidelines.

*Reference: Common Rule, 28 CFR 66.36 (I)(3) and NP Common Rule, Appendix A to Part 70, (1).*

8. **Termination.** Contracts over \$10,000.00 must contain provisions for termination by the grantee. Only the grantee has the right to terminate the contract. There are two types of termination: a) Termination for Convenience, and b) Termination for Cause.

The grantee has the option of tailoring the termination clause to fit the type of contract, i.e., fixed price or cost reimbursement. The grantee, by written notice, may terminate the contract, in whole or in part, when it is in the grantee's interest.

- a. **Termination for Convenience.** Contract is terminated due to reasons known to the grantee, i.e., program changes, changes in state-of-the-art equipment or technology, insufficient funding, etc. This type of termination is utilized when the contractor is not in violation of the contract terms and conditions.
- b. **Termination for Cause.** Contract is terminated due to actions by the contractor, i.e., failure to perform, financial difficulty, slipped schedules, etc. In certain instances, termination settlement may include repurchase costs to be paid by the contractor.

Termination settlements shall be accommodated by negotiations carefully planned in order to achieve an equitable resolution.

*Reference: Common Rule, 28 CFR 66.36 (l) (2) and NP Common Rule, 28 CFR 70.48 (b).*

9. **Construction.** Contracts awarded for construction (generally OJP grants do not allow construction) have special requirements and clauses. Refer to the OJP Financial Guide in the procurement chapter for specifications. If you have an OJP grant allowing construction costs, please read the associated solicitation, award documents, and special conditions carefully. Regular contact with your program manager is very important.
10. **Key Personnel Clause.** Contracts awarded for personal services may contain a clause requiring personnel changes be approved by the Awarding agency. This clause would reduce chances of hiring someone unqualified working on the project.

## Chapter 11

### Contract Type Selection

***The type of procuring instruments used, e.g., fixed price contracts, cost reimbursable contracts, purchase orders, or incentive contracts shall be determined by the grantee and must be appropriate for the particular procurement and for promoting the best interest of the program or project involved.<sup>13</sup>***

1. **Fixed Price.** By the very nature of the method, all contracts awarded under a competitive sealed bidding result in some type of "fixed price" arrangement, normally a firm fixed price. In certain instances, fixed price contracts are the preferred type inasmuch as the risk rests with the contractor. In certain instances, fixed price contracts may also be negotiated when it is determined that "across the table" discussions with the contractor are required. Firm fixed price contracts are appropriate when:
  - a. It is possible to describe exactly what is needed to satisfy the requirement;
  - b. Across the table discussions are determined not necessary; and
  - c. It is determined that is adequate competition available.

Other types of fixed price contracts are:

- Fixed price with escalation (normally called "fixed price with economic price adjustment"), and
- Fixed price incentive.

2. **Cost Reimbursement.** Contractors should be reimbursed for their actual expenditures (no accruals may be reimbursed) no more often than bi-weekly. Normally, contractors are reimbursed in monthly increments. Some governmental organizations permit withholding of a small percentage of each reimbursement request to ensure final delivery and contract close-out. Inasmuch as contractors are incrementally reimbursed as the contract progresses, the risk to the contractor is minimized.

The most common type of cost reimbursement contract is the cost plus fixed fee (CPFF). In this type of contract the fee (on fixed price contracts it is defined as profit) is negotiated front-end and does not change. On cost reimbursement contracts, a ceiling is placed on the estimated cost. Even though additional dollars may be added under certain conditions, the fee does not change as long as the contract remains in-scope.

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***TIP: Recipients must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs.***

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<sup>13</sup> NP Common Rule, 28 CFR 70.44 (c).

Any contractual situation that automatically increases the fee when additional dollars are added is known as "cost plus percentage of cost" and is prohibited.<sup>14</sup> Other types of cost reimbursement contracts are:

- Cost contracts.
- Cost sharing contracts.
- Cost plus incentive fee contracts.

### 3. Other Contract Types.

- Time and materials* contracts contain specified fixed hourly rates. The contract stipulates that any materials purchased will be at the contractor's cost. Hours involved in contract execution must be negotiated.
- Labor hour* contracts are identical to time and materials contracts except that no materials are involved.
- Indefinite delivery* contracts are used when exact time of delivery is unknown.
- Letter contracts* are used when exigency requires an immediate binding agreement so work can begin, but time does not permit negotiation of a definitive contract. When the definitive contract is awarded, the letter contract is superseded and letter contract dollars expended will be incorporated in the definitive contract.
- State and local contractor lists*. Pre-approved competition has already occurred.

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*TIP: Time and materials contracts will be used when the grantee makes a determination that no other type of contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.*

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The above-listed contracts are summarized on the chart located on pages 30 to 32 of this guide.

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<sup>14</sup> Common Rule, 28 CFR 66.36 (f) (4) and NP Common Rule, 28 CFR 70.44 (c).

## Contract Type Checklist

No.	Question	Yes	No
1.	<p>Can the deliverables be specifically identified and the quality measurable?</p> <p>If the answer is "Yes," then a fixed price contract may be properly utilized, either by using competitive sealed bidding procedures, or, if discussions are necessary, negotiation procedures.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Should the contractor logically be able to assume the "risk" for contract performance?</p> <p>If the answer is "Yes," a fixed price contract is appropriate.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Is the contractor's accounting system capable of segregating costs so proper charges may be made to the grantee contract for invoicing purposes?</p> <p>If the answer is "No," another type of contract other than cost reimbursement must be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>Realizing that cost reimbursement contracts require more contract administration responsibilities, is the grantee prepared to accept this responsibility?</p> <p>If the answer is "No," steps must be taken to correct the deficiency and meet this responsibility before the contract is awarded.</p>	<input type="checkbox"/>	<input type="checkbox"/>
5.	<p>Time and Materials, indefinite quantity, and requirements contracts require that orders against the contract be negotiated and placed before the contractor begins work. Will the grantee be in a position to describe individual tasks to be accomplished as they generate?</p> <p>If the answer is "No," consideration should be given to other contractual types.</p>	<input type="checkbox"/>	<input type="checkbox"/>
6.	<p>Concerning "Letter Contracts," are monetary limits along with a target date for definitization shown on the document?</p> <p>If the answer is "No," the letter contract should be changed to accommodate these two points.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Guide to Selection of Contract Types

Type	Applicability	Essential Elements	Limitations
<b>Firm-Fixed Price</b>	Fair and reasonable prices can be established at inception. For example: <ul style="list-style-type: none"> <li>Reasonably definite design or performance specifications;</li> <li>Realistic estimates;</li> <li>Adequate competition; and</li> <li>Valid cost or operating data that provides reasonable price comparisons.</li> </ul>	Initial fixed-price places 100% responsibility and risk on the contractor.	Grantee and contractor must agree on fixed-price at inception.
<b>Fixed-Price with Escalation</b>	Market or labor conditions unstable over extended production period.	Ceiling on upward adjustment; downward adjustment appropriate where elements escalated may fall below base levels provided in contract.	Contingencies are industry-wide and beyond contractor control; contingencies must be specifically defined in the contract.
<b>Fixed-Price Incentive</b>	Where cost uncertainties exist and there is the possibility of cost reduction and/or performance improvements by giving contractor (i) a degree of cost responsibility and (ii) a positive profit incentive. <u>Firm Target Type</u> : Firm target and final profit adjustment formula can be negotiated initially.	<u>Firm Target</u> : Target cost; target profit; price ceiling; and profit adjustment formula.	Adequate Contractor accounting system required. Must determine that any other contract type is impractical. Used for development and production procurements.
<b>Cost and Cost-Sharing</b>	Uncertainties in Performance -- Impossible to estimate costs firmly. <u>Cost</u> : R&D with non-profit organizations or educational institutions; facilities contracts. <u>Cost-Sharing</u> : Development or research projects jointly sponsored by government and contractor where contractor anticipates commercial benefit in lieu of fee under the contract.	Uncertainties in Performance -- Impossible to estimate costs firmly. <u>Cost</u> : Government pays cost; no fee. <u>Cost-Sharing</u> : Government pays agreed predetermined portion of costs; no fee.	Adequate Contractor accounting system required. Grantees must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs. <u>Cost-Sharing</u> : Must present evidence that there is high probability that contractor will receive substantial present or future commercial benefits.



## Guide to Selection of Contract Types

Type	Applicability	Essential Elements	Limitations
<b>Cost-Plus Incentive Fee (CPIF)</b>	Uncertainties in Performance -- Impossible to estimate costs firmly. Development and test when incentive formula can provide positive incentive for effective management. Where feasible, use performance incentives together with cost and schedule incentives.	Uncertainties in Performance -- Impossible to estimate costs firmly. Target cost; target fee; minimum and maximum fee; fee adjustment formula (formula applied at end of performance).	Adequate Contractor accounting system required. Grantees must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs. <u>Fee Limitations:</u> Production and Services -- 10% est. cost; R&D -- 15% est. cost. Formula should provide incentive effectiveness over variation in costs throughout the full range of reasonable foreseeable variation from target cost.
<b>Cost-Plus-Fixed-Fee</b>	Uncertainties in Performance -- Impossible to estimate costs firmly. <u>Term Form:</u> Research preliminary exploration, or study when level of effort is initially unknown (or development and test when a CPIF is impractical). <u>Completion Form:</u> Research or other development effort when the task or job can be clearly defined, a definite goal or target expressed, and a specific end product required.	Uncertainties in Performance -- Impossible to estimate costs firmly. Negotiated estimate of costs; fee fixed initially except for changes in the work or services required.	Adequate Contractor accounting system required. Grantees must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs. <u>Fee Limitations:</u> Production and Services -- 10% est. cost; R&D -- 15% est. cost. Not for development of major weapons once exploration indicates engineering development is feasible.
<b>Time and Materials (Labor-Hours)</b>	Not possible initially to estimate extent or duration of work (L-H used where materials not involved), e.g., engineering or design services, repair, maintenance, or overhaul.	Direct labor hours specified at fixed hourly rates; direct materials at "cost." Ceiling price shall be established.	Determination that no other type of contract is suitable. Grantees must closely monitor cost reimbursement contracts to avoid unneeded cost over-runs.

## Guide to Selection of Contract Types

Type	Applicability	Essential Elements	Limitations
Letter Contract	Exigency requires immediate binding agreement so work can begin, but time does not permit negotiation of a definitive contract.	Maximum government liability, type of definitive contract, as many definitive contract provisions as possible.	No other contract type suitable.
State and Local Contractor Lists	Where adequate competition has occurred and the product or service offered meets the needs of the project.	Follow local/state regulations.	Ensure that state or local geographic presences have not been used in the procurement evaluation.
Indefinite Delivery	<p>Exact time of delivery unknown.</p> <p><u>Definite Quantity</u>: Quantity known, delivery period can be specified; supplies available or have a short lead time.</p> <p><u>Requirements</u>: Preciseness of designated activities during a definite period not known initially.</p> <p><u>Indefinite Quantity</u>: Impossible to know precise quantities needed by designated activities during a definite period and government cannot commit itself beyond a minimum.</p>	<p><u>Definite Quantity</u>: Provision for delivery to designated points or upon order.</p> <p><u>Requirements</u>: Estimated total quantity; maximum and minimum total quantity where feasible; maximum and minimum order where appropriate.</p> <p><u>Indefinite Quantity</u>: Stated maximum and minimum total quantity; maximum and minimum order where applicable.</p>	Firm fixed-price, fixed-price with escalation, or fixed-price with redetermination only.

## Chapter 12

### Code of Conduct

***Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.<sup>15</sup>***

Conflicts of interest (or the appearance thereof) continually plague contractual activity supported by governmental funds. No employee, officer, or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved (*DOJ strictly applies this standard*). Such a conflict arises when:

1. The employee, officer or agent, or
2. Any member of his/her immediate family, or
3. His or her partner, or
4. Any organization which employs, or is about to employ, has a financial or other interest in the firm being evaluated or selected for award.

For the above reason, grantee personnel involved in the procurement process must be continually and forever alert to situations that may create a real, or even the appearance of, a conflict of interest. Common sense and adherence to standard and customary codes of conduct will go a long way toward eliminating potential problems.

However, this alone is not enough. Awareness and avoidance of sensitive situations should be a primary individual objective. Grantee personnel should:

- Be familiar with any code of ethics guidance published by or available to their organization.
- Not take gifts and gratuities from persons or organizations associated with the procurement process. In this connection, the grantee may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
- Avoid, at all times, even the appearance of a conflict of interest.
- Ensure that proposal evaluators (price and technical) or members of their immediate families do not own stock or have other financial interest in the companies being evaluated.
- Refer any problem that arises concerning conflict of interest to upper management and legal counsel, if appropriate.

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<sup>15</sup> Common Rule, 28 CFR 66.36 (b) (3) and NP Common Rule, 28 CFR 70.42.

## Code of Conduct Checklist

No.	Question	Yes	No
1.	<p>Is there any indication that there is any inappropriate action on the part of either the grantee or the contractor from either an individual or organizational conflict of interest standpoint?</p> <p>If the answer is "Yes," the grantee's top management, in concert with legal counsel, should determine the severity of the problem and enforce sanctions and notify proper authorities.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Is there any indication the Statement of Work might be restrictive?</p> <p>If the answer is "Yes," the Statement of Work must be corrected and the RFP amended or canceled, as appropriate.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Have there been any protests or hints of improprieties from any outside sources?</p> <p>If the answer is "Yes," the validity must be determined and action taken accordingly.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>Has there been an appearance of conflicts of interest relating to the proposed contractual action?</p> <p>If the answer is "Yes," a thorough investigation should be conducted and any required corrective action taken.</p>	<input type="checkbox"/>	<input type="checkbox"/>
5.	<p>Have cost and technical evaluation committee members evaluating proposals under competitive negotiation procedures signed a statement confirming the fact that they or members of their immediate family do not own stock in the companies being evaluated?</p> <p>If the answer is "No," a signed statement should be obtained from each evaluator.</p>	<input type="checkbox"/>	<input type="checkbox"/>
6.	<p>Has "brand name or equal" been used excessively in similar solicitations that might be interpreted as leading to a conflict of interest situation?</p> <p>If the answer is "Yes," the work specification, if possible, should be expanded in order to achieve more competition.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 13

### Price and Cost Analysis

***Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications.<sup>16</sup>***

**Price Analysis** involves a comparison of the bottom line price quoted by the offeror with prices paid on other contracts for the same or similar materials or services; a review of trade publications for comparability; a comparison of prices quoted by other respondents to the solicitation (does not apply to sole source contracts); and any other comparison available to the grantee. The purpose of price analysis is to determine that the price quoted is within range of acceptability to the grantee.

**Cost Analysis** involves an analysis of the individual elements of cost (as requested by the solicitation) as stated in the contractor's cost proposal. Examples of individual elements of cost include direct labor, fringe benefits, overhead (indirect costs), materials, travel, subcontracts, etc. Questionable individual elements of cost become negotiation targets for the grantee during the subsequent negotiation with the contractor.

Price and Cost Analysis are required for all proposals submitted by offerors for evaluation and negotiation by the grantee. Grantees should make independent estimates before receiving bids or proposals. Contents of the cost proposal should be in consonance with the contractor's accounting system which must be operationally capable of segregating costs by contract. Offerors should certify that individual elements of cost are true, correct and verifiable from the contractor's accounting system.

Grantees should compare graphically each contractor's cost proposal using spreadsheets. However, keep in mind that accounting systems differ between contractors and exact dollar comparison between individual cost elements may not constitute a valid comparison. For example, one contractor may charge a certain expense item to overhead (indirect costs), whereas another contractor may charge an identical expense item as a "direct" charge to the contract.

Price Analysis and Cost Analysis are normally used in concert with each other. Each should support the other.

From an operational standpoint, this important facet of an effective negotiation plan cannot be overlooked or minimized.

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<sup>16</sup> Common Rule, 28 CFR 66.36 (f) and NP Common Rule, 28 CFR 70.45.

## Price and Cost Analysis Checklist

No.	Question	Yes	No
1.	<p>Is the total price determined to be fair and reasonable? Does it compare favorably with the sum total of the individual elements of cost that have been analyzed?</p> <p>If the answer is “No,” (with a limited tolerance allowed), then further effort is required to make these two figures more compatible.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Was the overhead (indirect cost) rate used in the contractor’s proposal determined by audit?</p> <p>If the answer is “Yes,” determine when audit was completed and whether the overhead (indirect cost) rate can be categorized as current.</p> <p>If the answer is “No,” determine on what basis the overhead (indirect cost) rate was calculated and then validate acceptability.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Was a spreadsheet used to show graphically a comparison of the elements of cost?</p> <p>Even though a spreadsheet is not mandatory, its use is highly recommended.</p>	<input type="checkbox"/>	<input type="checkbox"/>
4.	<p>Were individual results from cost analysis used to determine negotiation cost targets?</p> <p>Remember the proposal is the contractor’s. Justification is required for any element of cost questioned by the grantee.</p>	<input type="checkbox"/>	<input type="checkbox"/>
5.	<p>If possible, grantees should adhere to maximum Federal fee limitations under cost reimbursement arrangements, i.e., 10% on estimated cost, 15% of the estimated cost on Research and Development, and 6% of the estimated cost of Construction or Architectural Engineering. Does the negotiated fee fall within these stated limitations?</p> <p>If the answer is “No,” consider alternatives with upper echelon grantee management.</p>	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 14

### Protests

***Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.<sup>17</sup>***

Any contractor or aggrieved party has the right to protest actions before or after the award of the contract. In accordance with good administrative practice and sound business judgment, grantees shall be responsible for the settlement of all contractual responsibilities arising out of contract solicitations and awards. Issues that might initiate a protest are:

1. Proposal evaluation activity (competitive negotiations).
2. Disputes (differences of opinion).
3. Conflicts of interest.
4. Any other pertinent issues.

Protests should be in writing to the grantee, inasmuch as the grantee is responsible for actions under its contracts. Grantees shall follow local procedures for resolution in order that effective due process may be achieved.

In summary, the grantee is responsible for handling and resolving all contractual activity protests. Only in rare instances would a grantor agency intervene. However, this should not be construed that Federal advice should not be sought when considered appropriate by the grantee.

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<sup>17</sup> Common Rule, 28 CFR 66.36 (b) (11)(12) and NP Common Rule, 28 CFR 70.41.

## Protests Checklist

No.	Question	Yes	No
1.	<p>Has the aggrieved party submitted his protest in writing?</p> <p>If the answer is “No,” consider recommending that the protest be submitted in writing if the magnitude is great enough to have serious operational impact.</p>	<input type="checkbox"/>	<input type="checkbox"/>
2.	<p>Has grantee’s top management been alerted to the seriousness of the protest and has legal counsel been sought?”</p> <p>If the answer is “No,” top management and legal counsel should be advised.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>Has the grantee exerted ample effort toward resolution of the protest before seeking help from grantor agency?</p> <p>If the answer is “No,” grantee should exert ample effort toward resolution before seeking help from grantor agency.</p>	<input type="checkbox"/>	<input type="checkbox"/>



## Chapter 15

### Contracting with Small and Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms

*The grantee and subgrantee will take all necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.*<sup>18</sup>

<b>Small Business Firms:</b>	Designated by the Small Business Administration.
<b>Minority Business Firms:</b>	51 percent Minority Owned/Operated.
<b>Women's Business Enterprises:</b>	Small business that is at least 51 percent owned by a woman or women.
<b>Labor Surplus Area Firms:</b>	Firms geographically located in distressed labor surplus areas designated by the Secretary of Labor.

Grantees shall ensure the following actions are taken in dealing with the above listed firms:

1. Placement on Bidders lists;
2. Ensuring that solicitations are mailed;
3. Allocating requirements into smaller amounts, when feasible, to permit maximum participation;
4. Establishing delivery requirements, when feasible, for compatibility with capability of the above-listed firms;
5. Using the services of the Small Business Administration, and
6. When subcontracts are considered, requiring the prime contractor to take these steps (1-5) for the subcontracts.

Notwithstanding the fact that no contracting goals are established, the grantee is expected to provide statistics on contract awards to the grantor agency upon request.

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<sup>18</sup> Common Rule, 28 CFR 66.36 (e) and NP Common Rule, 28 CFR 70.44 (b).

## Contracts with Small and Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms Checklist

No.	Question	Yes	No
1.	Are statistics readily available concerning contract awards to these firms?  If the answer is "No," develop a simplified reporting system.	<input type="checkbox"/>	<input type="checkbox"/>

## Chapter 16

### Contract Administration

***Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.<sup>19</sup>***

Contract administration refers to post award actions by the grantee to ensure that the terms and conditions of the contract are met. It takes continual vigilance on the part of the grantee to ensure that contract deliverables are met to accommodate mandated project requirements. A State grantee will follow the same procedures for procuring property and services under a grant as it uses for its non-Federal funds. Other grantees should follow procedures outlined in this guideline.

1. **Delegations.** Grantee management shall delegate administration responsibility to designated personnel selected for their technical and administrative capability to administer the contract effectively. Any disagreement between technical and administrative personnel shall be referred to top level grantee management for resolution.
2. **Inspection and Acceptance.** Contractor deliverables shall be inspected before official acceptance by the grantee to ensure that contract requirements are met. Acceptance shall be made officially only after the grantee determines that contract terms and conditions have been met.
3. **Progress Reports.** Under cost reimbursement contracts, progress/status reports are required normally by the Statement of Work. These reports shall be reviewed by the grantee to determine if contract delivery milestones are being met, and, if they are not, the seriousness of the delinquency should be analyzed and, if appropriate, corrective action taken.
4. **Invoice Processing.** Under cost reimbursement contracts, reimbursement invoices are submitted normally by the contractor on a monthly basis. However, in the case of a small or disadvantaged contractor, invoices may be submitted every two weeks. There must be a correlation between dollars paid incrementally to the contractor and contract progress in consonance with an acceptable tolerance level that is established. Invoices should be processed as expeditiously as possible with dollar hold-backs (to be paid after completion/final acceptance) considered in determining the net amount of the incremental dollar reimbursement.

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<sup>19</sup> Common Rule, 28 CFR 66.36 (b) (2) and NP Common Rule, 28 CFR 70.44 (a).

5. **Property Administration.** Title to any property purchased by the contractor with Federal funds remains with the grantor agency. The grantee is responsible for all property management functions and strict accountability for all property purchased or furnished by the Federal government. Contractor use of excess and surplus property from Federal sources is encouraged by the grantor agency. The current Federal capitalization threshold is \$5,000, but recipients must follow their own threshold policy limitations if they are more restrictive than the Federal threshold.
6. **Consent to Subcontract.** Grantees shall establish procedures to review and give prior consent for subcontracts awarded by the prime contractors. Monetary consent levels may be established at the discretion of the grantee.
7. **Subcontract Reporting.** Beginning with awards after October 1, 2010, grantees must report subcontract/subrecipient information for subawards greater than \$25,000. In some cases, a contract may qualify for reporting. Please see Chapter 20 of the OJP OCFO Financial Guide for more information.
8. **Grantee Contract Close-out.** Grantee contract close-out is an important function of contract administration and may be characterized logically as the last of the many functions related to contract administration.

## Contract Administration Checklist

No.	Question	Yes	No
	<b>Delegations</b>		
1.	<p>Have delegations been made in writing to include all operational and administrative aspects of contract post award activity?</p> <p>If the answer is "No," action should be taken to have proper delegations made in writing.</p>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Inspection and Acceptance</b>		
2.	<p>For materials and hardware, do invoices submitted by the contractor include evidence of acceptance by the grantee?</p> <p>If the answer is "No," the invoice shall not be paid until evidence of acceptance is indicated.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3.	<p>On cost reimbursement contracts, before acceptance by the grantee, has contract dollar reimbursement been reconciled with available contract specified funding?</p> <p>If the answer is "No," procedures shall be developed to verify funding availability before acceptance is made.</p>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Progress Reports (cost reimbursement contracts)</b>		
4.	<p>Are progress reports reviewed to validate correctness and to determine if contract delivery schedules/milestones are being met?</p> <p>If the answer is "No," progress related to milestones should be analyzed to determine contract status. If the contractor is in violation of the contract requiring progress reports, action should be taken to enforce the contract terms and conditions.</p>	<input type="checkbox"/>	<input type="checkbox"/>

	<b>Inspection and Acceptance</b>	Yes	No
5.	<p>Are invoices submitted by the contractor for materials and equipment analyzed by the grantee before authorizing payment?</p> <p>If the answer is "No," procedures shall be developed to analyze all invoices submitted to ensure availability.</p>	<input type="checkbox"/>	<input type="checkbox"/>
6.	<p>Under cost reimbursable contracts, are the dollars requested by the contractor compatible with progress indicated on status reports?</p> <p>If the answer is "No," percent of contract completion indicated on progress reports should be compatible with total funds requested for reimbursement.</p>	<input type="checkbox"/>	<input type="checkbox"/>
7.	<p>Is availability of funds determined before approval of the invoice authorizing payment?</p> <p>If the answer is "No," funds availability must be determined before authorizing the invoice for payment.</p>	<input type="checkbox"/>	<input type="checkbox"/>
	<b>Property Administration</b>		
8.	<p>Does the grantee maintain a system for strict accountability for both expendable supplies and property purchased under the contract or furnished by grantor agency?</p> <p>If the answer is "No," a system of accountability, including tagging of property, shall be developed.</p>	<input type="checkbox"/>	<input type="checkbox"/>
9.	<p>Is government furnished property (GFP) inventoried at established intervals?</p> <p>If the answer is "No," a schedule for recurring inventory of GFP should be established.</p>	<input type="checkbox"/>	<input type="checkbox"/>

	<b>Consent to Subcontract</b>	Yes	No
10.	<p>Before consent is given by the grantee to prime contractors to subcontract, are the following points considered:</p> <ol style="list-style-type: none"> <li>1. Did the prime contractor get adequate competition to satisfy the requirement? <input type="checkbox"/></li> <li>2. Does the subcontract include a “flow-down” of mandatory clauses included in the prime contract? <input type="checkbox"/></li> <li>3. Is any apparent conflict of interest indicated? <input type="checkbox"/></li> <li>4. On cost reimbursable contracts, did the evaluation of proposals include:               <ol style="list-style-type: none"> <li>i. A technical evaluation based upon evaluation criteria contained in the solicitation? <input type="checkbox"/></li> <li>ii. A price and cost analysis of top-ranked proposals? <input type="checkbox"/></li> </ol> </li> <li>5. Was the proper type of contract used? <input type="checkbox"/></li> <li>6. If the subcontract is on a sole source basis, is the sole source justification adequate? <input type="checkbox"/></li> <li>7. Was the documentation supporting the request for consent to subcontract submitted before contract award, and it is considered adequate? <input type="checkbox"/></li> </ol> <p>If any of the answers are “No,” consent should be withheld, the reasons investigated, and problems resolved before consent is given.</p>		

	<b>Grantee Contract Close-out</b>	<b>Yes</b>	<b>No</b>
11.	Have all contract funds been reconciled? Have any remaining funds been de-obligated? Have all invoices been paid?	<input type="checkbox"/>	<input type="checkbox"/>
12.	Has any property furnished or purchased by the grantee been returned or accounted for in accordance with existing procedures?	<input type="checkbox"/>	<input type="checkbox"/>
13.	Has the grantee received a certification from the contractor that all bills relating to the contract have been paid?	<input type="checkbox"/>	<input type="checkbox"/>
14.	Have all contract deliverables been inspected and accepted by the grantee?	<input type="checkbox"/>	<input type="checkbox"/>
15.	Have any law suits/legal actions relating to contract activity been settled?	<input type="checkbox"/>	<input type="checkbox"/>
16.	On cost reimbursement contracts, is the grantee satisfied that all claimed costs are allowable costs relating to contract activity?	<input type="checkbox"/>	<input type="checkbox"/>
17.	Has a bi-lateral amendment been executed reflecting contract close-out?	<input type="checkbox"/>	<input type="checkbox"/>
	Contract close-out is not complete if any of the above questions reflect a "No" response.		



## Chapter 17

### Other Considerations

#### 1. Lease vs. Purchase

***Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.<sup>20</sup>***

Before entering into a leasing arrangement for equipment, a lease-purchase analysis should be performed by the grantee to determine economic feasibility. This analysis should reflect a comparison of forecasted costs for both an outright purchase and a leasing arrangement. If determination is made to enter into a lease/purchase, grantees shall ensure that a certain part of the lease cost (dollars) will apply toward the purchase price of the equipment (indicated in the lease). In addition, grantees shall ensure that at a predetermined time, the equipment under lease is either:

- Purchased under the terms of the lease, or
- Returned to the lessor and action is taken to cancel the lease.

#### 2. Documentation

***Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.<sup>21</sup>***

It is extremely important that grantees document contractual actions in order to formulate and maintain an audit trail. The official contract file should reflect in detail all of the steps in the procurement process and serves as the official accountability document. (See Chapter 10, clause 5 “Examination of Records.”)

#### 3. Other Resources

Grantees and subgrantees are encouraged to use other resources such as donated property and Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

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<sup>20</sup> Common Rule, 28 CFR 66.36 (b) (4) and NP Common Rule, 28 CFR 70.44 (a) (2).

<sup>21</sup> Common Rule, 28 CFR 66.36 (b) (9).

#### **4. Use of Value Engineering**

Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

## Chapter 18

### Contracting Concepts Summary

The following lists show 1) practices to employ to have a successful procurement program, and 2) those practices to avoid that may result in unsatisfactory contracts being awarded by the recipient agency.

#### 1. Contracting Practices to Employ

- a. Ensure adequate competition.
- b. Prepare IFB/RFP.
- c. Maintain bidders list(s).
- d. Conduct interviews (for RFP).
- e. Obtain prior approval (where required).

#### 2. Contracting Practices to Avoid

- a. Place unreasonable requirements.
- b. Require unnecessary experience.
- c. Engage in noncompetitive pricing.
- d. Engage in organizational conflicts-of-interest.
- e. Require unreasonable timeframes.