

CHAPTER 2-230 PROCUREMENT GUIDELINES

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2-230-00 What is procurement?

Procurement is the act or process of purchasing the services and goods your program needs.

2-230-10 What does this chapter do?

This chapter provides guidelines for procurement with funds from assistance agreements awarded by us, the Office of Surface Mining Reclamation and Enforcement (OSM) to you, the recipient. The purpose of this guidance is to ensure that you get the materials and services your project needs efficiently and appropriately.

2-230-20 Where do these rules come from?

Requirements for procurements with Federal funds come from Federal laws and the *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, known as the *Grants Common Rule*, at 43 CFR 12 Subpart C.

2-230-30 What procurement rules must states follow?

You, a state, must use the same policies and procedures you use for procurements with state funds. You must ensure that every purchase order or contract includes any clauses required by Federal statutes, executive orders and regulations.

2-230-40 What procurement rules must recipients other than states follow?

You, a recipient other than a state, will use your own procurement procedures based on state and local laws and regulations. However, the procurements must follow applicable Federal law and the standards in the *Grants Common Rule* at 43 CFR 12.76. These standards include the following requirements.

- A. Your system must ensure that procurements are effective, efficient and economical. Plan and carry out procurement transactions so as to provide full and open competition. Analyze proposed procurements to ensure that they are necessary and the cost is reasonable. Consider alternative sources and methods to reduce costs. Make awards only to responsible contractors with the

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ability to perform successfully. Maintain a contract management system which ensures that contractors perform in accordance with the terms of the contract.

- B. You must ensure that no employee, officer or agent of your organization with a conflict of interest, real or apparent, will participate in the selection, award, or administration of a contract.
- C. You must settle all contractual issues in accordance with good administrative practice and sound business judgment. We will not step in and substitute our judgment for yours unless the matter is primarily a Federal concern. You must refer violations of law to the local, state, or Federal authority with jurisdiction.
- D. You must have a protest procedure to resolve procurement disputes. You must inform us of protests. A protestor must exhaust all of your administrative remedies before pursuing a protest with us. We will review protests of your contracts only if there is a violation of Federal law or regulations, or a violation of your protest procedures.
- E. You must maintain records detailing the significant history of each procurement action. These records must include, but are not limited to, the reason for selecting the method of procurement and the type of contract, contractor selection or rejection, and the basis for the price.

2-230-50 What provisions must you include in contracts?

- A. Your contracts and your subgrantees' contracts must include the following provisions.
 - 1. All contracts must include notice of OSM requirements and regulations about:
 - a. Reporting.
 - b. Copyrights and rights in data.
 - c. Patent rights for any discovery or invention which arises or is developed under the contract.
 - 2. All contracts must require contractors to keep all records, paper or electronic, which are pertinent to the contract. Contractors must retain all required records for three years after you make final payments and close all pending matters. Contractors must allow you, us, the Department of the Interior, the Comptroller General of the United States, or any authorized representatives, access to all records for the purpose of making audit, examination, excerpts, and transcriptions.
 - 3. All contracts must recognize mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat.871).

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4. All contracts over the small purchase level must include administrative, contractual, or legal remedies for contractors who violate contract terms, and provide appropriate sanctions and penalties.
 5. All contracts over \$10,000 must include provisions allowing you to terminate the contract for cause or for convenience. They must include notice of your termination procedures.
 6. All construction contracts and subcontracts over \$10,000 must require compliance with Executive Order (E.O.)11246, *Equal Employment Opportunity*, E.O. 11375, and related Department of Labor regulations (41 CFR Part 60).
 7. All contracts for construction or repair must require compliance with the Copeland "Anti-Kickback" Act (18 USC 874) and related Department of Labor regulations (29 CFR Part 3).
 8. All contracts for supplies or construction materials must require compliance with the Buy American Act (41 USC 10) and related Department of the Interior regulations (43 CFR Part 12 Subpart E).
 8. All contracts, subcontracts, and subgrants over \$100,000 must require compliance with all applicable standards and requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368), E.O. 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- B. We may also require provisions on changes, remedies, changed conditions, record retention and access, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

2-230-60 Do the Davis-Bacon Act and Contract Work Hours and Safety Standards Act apply to contracts supported with OSM funds?

- A. SMCRA does not include a prevailing wage provision or require you to comply with the Davis-Bacon Act (40 USC 276a). Since there is no direct relationship between OSM and the contractor, we consider your contracts exempt from Davis-Bacon requirements. However, state law or administrative procedures, or other Federal laws if you have other Federal funds in your project, may require you to include a provision for compliance with the Davis-Bacon Act in your contracts.
- B. The Davis-Bacon Act applies when OSM deals directly with a private contractor. We will include Davis-Bacon provisions when we award contracts directly for Federal regulatory or reclamation programs.
- C. SMCRA does not require you to comply with the Contract Work Hours and Safety Standards Act (40 USC 327-330). However, state law or administrative procedures may require you to include

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these provisions in your contracts.