**Section 2030.1230 Procurement Standards**

a) This Section provides standards for use by the Department in establishing procedures for the procurement with award funds of supplies, equipment, construction, and other services.

b) The standards contained in this Section do not relieve the provider of the contractual responsibilities arising under its contracts and/or subawards. The recipient is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, state or Federal authorities as may have proper jurisdiction.

c) Recipients may use their own procurement regulations which reflect applicable state and local law, rules and regulations provided that procurements made with Department award funds adhere to the standards set forth as follows:

1) The recipient shall maintain a code of standards of conduct which shall govern the performance of its officers, employees, or agents, in contracting with the Department and expending Department award funds. Provider's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors and subproviders or potential contractors and subproviders. To the extent permissible by state or local law, rules or regulations, such standards shall provide the penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the provider officers, employees, or agents, or by contractors, subproviders or their agents.

2) All procurement transactions shall be conducted in a manner that provides, to the maximum extent practical, open and free competition. The recipient shall establish procedures to avoid organizational conflicts of interest as defined in Section 2030.1215(a) or noncompetitive practices among contractors and subproviders which may restrict or eliminate competition or otherwise restrain trade.

3) The recipient shall establish procurement procedures which provide for, at a minimum, the following procedural requirements:

A) Proposed procurement actions shall be reviewed by provider officials to avoid purchasing items which are unnecessary, duplicative or inconsistent with the purposes of the award. Cost/benefit consideration shall be made of lease and purchase alternatives to determine the most economical and practical procurement.

B) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurement, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used, the specific features of the named brand which must be met by offers should be clearly specified.

C) Positive efforts shall be made to utilize small business and minority-owned business sources of supplies and services. The efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Department funds, without creating non-competition or restraining trade.

D) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be based on a cost benefit consideration for the particular procurement and shall be consistent with the objectives of the award. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

E) Formal advertising, with adequate purchase description, sealed bids, and public openings, shall be the required method of procurement unless negotiation pursuant to subsection (F) below is necessary to accomplish sound procurement. However, procurements of $5,000 or less need not be so advertised unless otherwise required by state or local law or regulations. Where such advertised bids are obtained, the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the provider, price and other factors considered. Factors such as discounts, transportation costs and taxes may be considered in determining the best bid. Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the provider. Any or all bids may be rejected when it is in the provider's interest to do so, and such rejections are in accordance with applicable state and local law, rules, and regulations.

F) Procurements may be negotiated if:

i) The exigency will not permit the delay incident to advertising;

ii) The material or service to be procured is available from only one person or firm (All contemplated sole source procurements in which the aggregate expenditure is expected to exceed $7,500 shall be referred to the Department for prior approval.);

iii) The aggregate amount involved does not exceed $5,000;

iv) The contract or subaward is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;

v) No acceptable bids have been received after formal advertising;

vi) The purchases are for highly perishable materials or medical supplies or for materials or services for which prices are established by law and for technical items or equipment requiring standardization and interchangeability of parts with existing equipment;

vii) otherwise authorized by law, rules, or regulations.

G) Contracts and subawards shall be made only with responsible contractors and subproviders who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor or subprovider integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

H) Procurement records or files for purchases in amounts in excess of $5,000 shall provide the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor and/or subprovider selection, and the basis for the cost or price negotiated.

I) A system for contract and/or subprovider conformance with terms, conditions, and specifications for the contract or order.

J) The provider shall include provisions addressing the following matters:

i) Contracts and subawards shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances in which contractors and/or subproviders violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

ii) Contracts in excess of $5,000 shall contain suitable provisions for termination by the provider including the manner by which it will be effected and the basis for settlement. In addition, such contracts and/or subawards shall describe conditions under which the contract and/or subaward may be terminated for default as well as conditions in which the contract and/or subaward may be terminated because of circumstances beyond the control of the contractor and/or subprovider.

iii) All negotiated contracts and/or subawards (except those of $5,000 or less) awarded by providers shall include a provision to the effect that the duly authorized representatives of the provider and Department shall have access to any books, documents, papers, and records of the contractor and/or subprovider which are directly pertinent to a specific award funded program or services for the purpose of making audits, examinations, excerpts, and transcriptions.