



BEAD Compliance Essentials: Procurement & Debarment

Broadband Equity, Access, and Deployment Program (BEAD)

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Meet Your Presenters



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Agenda

1. Understand procurement compliance requirements
2. Identify suspension and debarment compliance requirements
3. Recognize audit risk areas
4. Apply practical internal controls



01

BEAD (ALN 11.035) Procurement Compliance Requirements



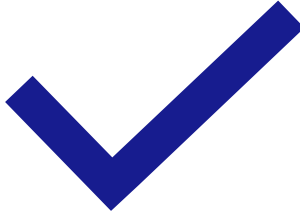
Regulatory Framework



BEAD grant agreement



2 CFR Part 200
(Uniform Guidance)



OMB Compliance
Supplement

Procurement Principles Under 2 CFR 200

General
Procurement
Standards
(2 CFR 200.318)

Full & Open
Competition
(2 CFR 200.319)

Micro Purchase and
Small Purchase
Methods
(2 CFR 200.320)

Formal and
Noncompetitive
Methods
(2 CFR 200.320)

Cost or Price
Analysis
(2 CFR 200.324)

Bonding
Requirements
(2 CFR 200.326)

Inclusion of
Applicable Required
Provisions
(2 CFR 200.327)

Build America, Buy
America Act

General Procurement Standards

Written Procurement Policies

- Requirement:
 - Non-federal entities must maintain documented procurement procedures that comply with Federal standards and reflect applicable state/local law
- Best practices
 - Maintain a procurement policy or manual approved by governance
 - Crosswalk those policies to:
 - Formal competitive procurement (2 CFR 200.319)
 - Micro-purchase threshold (2 CFR 200.320)
 - Small purchase threshold (2 CFR 200.320)
 - Non-competitive (sole source) justification (2 CFR 200.320(c))
 - Conflicts of interest requirements (2 CFR 200.318)
 - Maintaining records to document history of procurements (2 CFR 200.318)
 - Update policies annually to ensure thresholds are current and practices are in line with Uniform Guidance
- ***Common Audit Pitfall – No documented (written) policies or procedures and no documentation of following the policies or procedures.***

Full and Open Competition

2 CFR 200.319

- These procedures must ensure that all solicitations:
 - Are made in accordance with [§ 200.319\(b\)](#);
 - Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and
 - Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.
- The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.
- Scoring systems are allowed for evaluation but any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.
- Noncompetitive procurements can only be awarded in accordance with [§ 200.320\(c\)](#).

Mirco Purchase and Small Purchase Methods

2CFR 200.320

- Micro-Purchase Method
 - Aggregate dollar amount does not exceed \$50,000
 - Exception – \$2,000 in the case of acquisition for construction subject to Davis-Bacon Act wage requirements
 - May be awarded without soliciting competitive bid quotes if the price is considered reasonable
- Small Purchase Method (Simplified Acquisition Method)
 - Aggregate dollar amount is less than \$250,000 but more than \$50,000
 - Need to obtain price or rate quotations from an adequate number of qualified sources

Common Audit Pitfall – Bids and/or price quotes are not maintained

Formal Procurement Methods – Sealed Bids

2 CFR 200.320(b)

Procurements > \$250,000

- Publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price.
 - ***Preferred for procuring construction services.***
- For sealed bidding to be feasible, the following conditions should be present:
 - A complete, adequate, and realistic specification or purchase description is available;
 - Two or more responsible bidders have been identified as willing and able to compete effectively for the business; and
 - The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.
- The following requirements apply:
 - Bids must be solicited from an adequate number of qualified sources.
 - Invitation for bids must define the items or services with specific information, including any required specifications.
 - All bids will be opened at the time and place prescribed in the invitation for bids.
 - A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder.
 - The recipient or subrecipient must document and provide a justification for all bids it rejects.

Formal Procurement Methods – Proposals

2 CFR 200.320(b)

Procurements > \$250,000

- Used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract
- Requirements:
 - Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.
 - The recipient or subrecipient must have **written procedures** for conducting technical evaluations and making selections.
 - Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and
 - The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation.
 - The method, where the price is not used as a selection factor, **can only be used** to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

Noncompetitive Procurement

2 CFR 200.320(c)

- Specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method.
- Can only be used in these circumstances:
 - The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold.
 - The procurement transaction can only be fulfilled by a single source.
 - The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
 - The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or
 - After soliciting several sources, competition is determined inadequate.

Common Audit Pitfall – Entities try to fall back on this with no documentation to support

Cost or Price Analysis

2 CFR 200.324

Procurements > \$250,000

- Required to be completed for every procurement action in excess of \$250,000
- Must include contract modifications
- Cost plus percentage of cost and percentage of construction cost methods of contracting must not be used

Common Audit Pitfall – No documentation to support this step was completed

Bonding Requirements

2 CFR 200.326

Procurements > \$250,000

- Minimum requirements must be as follows:
 - A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified timeframe.
 - A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.
 - A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

Inclusion of Applicable Required Provisions

2 CFR 200.327

Required for every purchase order or other contract > \$250,000

- 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
- 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
- Equal Employment Opportunity
- Davis-Bacon Act
- Contract Work Hours and Safety Standards Act
- Rights to Inventions Made Under a Contract or Agreement
- Clean Air Act
- Debarment and Suspension
- Byrd Anti-Lobbying Amendment
- Prohibition on certain telecommunications and video surveillance equipment or services
- Domestic preferences for procurements

Common Audit Pitfall – Contracts are missing required components

Build America, Buy America Act

Applies to all BEAD Awards

- Required that ALL items noted below used in the project or other eligible activities are produced in the United States unless a waiver is granted
 - Iron
 - Steel
 - Manufactured products (including but not limited to fiber-optic communications facilities)
 - Construction materials
- Secretary of Commerce waived the application of this preference when
 - Applying the domestic content procurement preference would be inconsistent with the public interest
 - Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 - The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project or other eligible activities by more than 25 percent
 - Waiver is limited in duration and scope.
 - For those BEAD awards obligated on or after the effective date of this waiver, February 22, 2024, through February 22, 2029 (*i.e.*, five years from the effective date), the waiver will apply to funds expended by award recipients and subrecipients during the entire period of performance of the award
 - For awards obligated prior to the effective date of this waiver, the waiver only applies to funds expended by award recipients and subrecipients after the effective date and for the remainder of the period of performance of the award

Why Procurement Is High Risk Under BEAD



Construction contract awards start quickly after award



Vendor decisions are audited years later



Procurement errors drive audit findings

02

BEAD (ALN 11.035) Suspension &
Debarment Compliance Requirements



Suspension & Debarment Requirement

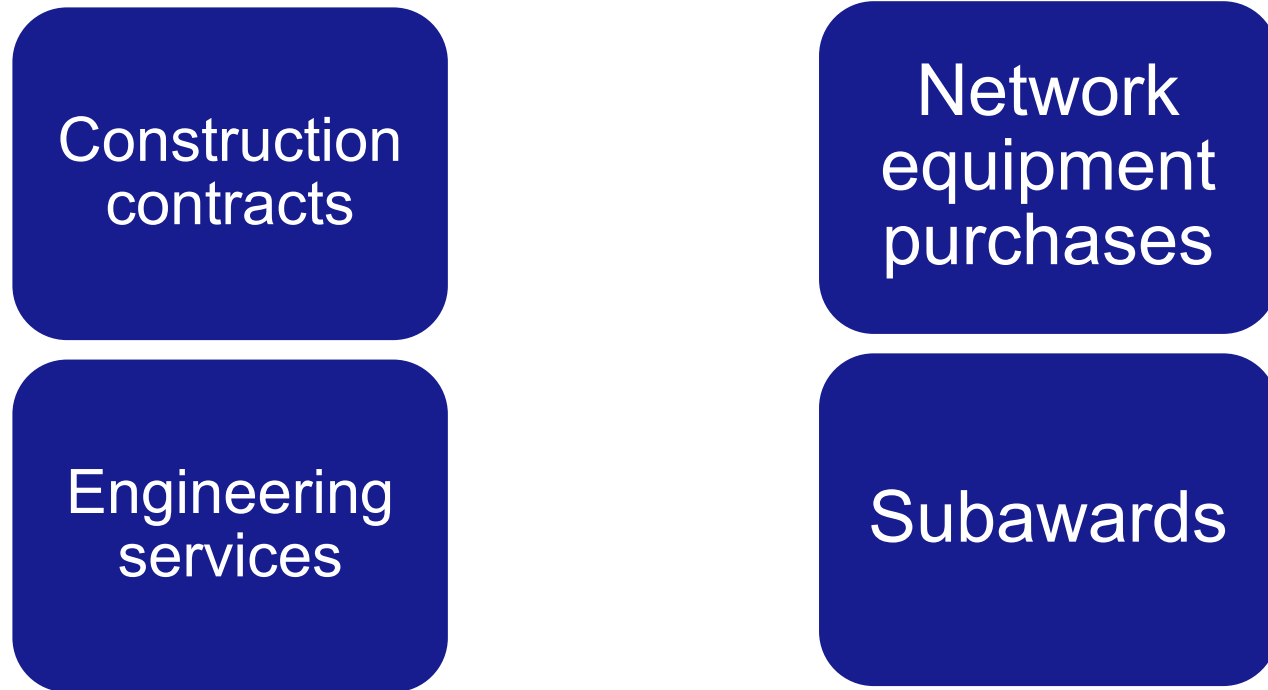
Applies to recipients and subrecipients

Applies to covered transactions

Must be checked before contract award

What Is a Covered Transaction?

Contracts for goods and services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed \$25,000 or meet certain other criteria as specified in 2 CFR 180.220



Acceptable Verification Methods

- [SAM.gov | Search](#)
 - Preferred method
 - Document search with date & time stamp
- Vendor certification
 - Typically obtained as part of a bid package
 - Vendor must certify the following:
 - No presently excluded or disqualified from participating in federal contracts
 - Has not, in the past three years, been convicted of—or had a civil judgment against them for—many of the offenses listed in 2 CFR 180.800(a)
 - Are not presently indicated for—or otherwise criminally or civilly charged by—a governmental entity for any of the offenses listed in 2 CFR 180.800(a)
 - Has not in the past three years, had one or more public transactions (federal, state, or local) terminated.
- Contract clause
 - Include a clause or condition in the contract that the vendor must not be suspended or debarred



03 & 04

Audit Risk Areas & Applying Internal Controls



Documentation Drives Audit Results

- Written Policies and Procedures are critical
 - Procurement – Refer to section 1 for detailed items to consider
 - Conflict of interest
 - Suspension & Debarment
- No documentation = audit finding
 - Retain everything obtained during procurement process—suggest a formal file (digital or printed) for each bid package
 - Regardless if formal process or simplified approach (smaller purchases)
 - Retain signed conflict of interest forms

Common Procurement Risk Areas

- Sole source without justification
- Insufficient bid documentation
- Late eligibility checks
- Timing issues
 - Checks not completed before contract execution
 - Retroactive fixes do **not** cure noncompliance



Consequences of Noncompliance



Audit findings



Increased oversight



Award termination



Withholding of payments



Required repayment of funds received



Ineligible for future funds

Key Takeaways

- Procurement is a core BEAD compliance area
- Suspension & debarment is mandatory
- Documentation quality determines outcomes

Appendix: Example Procurement Process



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