

## Broadband Infrastructure Program Post-Award Frequently Asked Questions Procurement

### **Q: Is Davis-Bacon a requirement of the Broadband Infrastructure Program (BIP) award?**

**A:** The contract provisions required by the program are limited to those cited in, [2 C.F.R. § 200.327, Contract Provisions](#), and [appendix II within 2 C.F.R. § 200.327](#). It is important that necessary investments in broadband infrastructure are carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. The National Telecommunications and Information Administration (NTIA) Office of Internet Connectivity and Growth (OICG) understands the importance of promoting workforce development and encourages recipients to ensure that broadband projects use strong labor standards, including project labor agreements and community benefit agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries. However, NTIA's BIP NOFO does not include Davis-Bacon as an explicit award requirement.

Additional information on how to remain compliant with the Davis-Bacon Act of 1931 can be found on the United States Department of Labor website and wage determinations can be found on the SAM.gov website at <https://sam.gov/content/wage-determinations>.

### **Q: What is an adequate number of professional services firms for prequalified lists of vendors?**

**A:** According to [2 CFR § 200.319\(e\)](#), "the non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period."

While there is no set number, the BIP recipient should take all appropriate measures to ensure that the use of a prequalified list of vendors does not unfairly exclude any vendor from freely and competitively bidding on any solicitation provided by the recipient and funded by the Federal grant funds in accordance with 2 CFR § [200.319\(a\)](#).

### **Q: We purchase in bulk for overall growth objectives, do all purchases need to be unique to this program?**

**A:** Use of materials purchased in advance of the award must be properly documented. The non-Federal entity may use inventory materials as an in-kind cost share pursuant to the requirements listed in [2 C.F.R. § 200.306\(b\)\(1\) - C.F.R. § 200.306\(b\)\(6\)](#). Costs for in-kind matching contributions will be reimbursed by fair market value of the material, or by comparison to the actual invoiced amount, whichever is lower. Non-Federal entities utilizing inventory materials should provide proper inventory tracking documentation to demonstrate the quantity of materials used.

**Q: We have conducted our due diligence on many vetted contractors for prequalification, can we initiate a competitive bidding solicitation to them?**

**A:** Non-Federal entities that opt to use a prequalified list of vendors to solicit goods and services for purposes of implementing Federally funded projects must ensure that the vendor selection process is properly documented, and any evaluation of the prequalified list is fully reconcilable and consistent with the non-Federal entity's procurement measures. All non-federal entities must follow local, State, and Federal procurement regulations, in accordance with the Federal procurement standards contained in §200.317-327.

**Q: Are domestic for-profit entities receiving a Federal grant subaward mandated by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR 200?**

**A:** All non-Federal entities must follow the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards listed in [2 C.F.R. 200](#) when procuring goods and services funded by Federal grant funds.

**Q: In 2 C.F.R. 200 § 324, can you give an example of a situation wherein profit is negotiated as a separate element in a contract?**

**A:** Non-Federal entities must ensure that all contracts funded by Federal grants are consistent with the following:

[2 C.F.R. § 200.324\(a\)](#): The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

[2 C.F.R. § 200.324\(b\)](#): The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

[2 C.F.R. § 200.324\(c\)](#): Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

[2 C.F.R. § 200.324\(d\)](#): The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Contracts wherein profit is negotiated as inseparable from the contract in contravention of [2 C.F.R. § 200.324\(b\)](#) would be a cost-plus percentage contract. Cost-Reimbursement and Time and Materials contracts tend to be more appropriately aligned to [2 C.F.R. § 200.324](#). In the case of Time and Materials contracts, oversight efforts must be made to ensure that the project is being implemented as efficiently as possible.

**Q: If a contractor is bonded for an amount that will cover the project, are they required to meet the requirements listed in 2 C.F.R. 200 § 326?**

**A:** According to [2 C.F.R § 200.326](#), if a construction or facility improvement contracts or subcontracts exceeds the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements listed in [2 C.F.R § 200.326](#) will apply.

**Q: Many Internet service providers utilize cooperative purchasing with NCTC (National Content & Technology Cooperative) who contracts with thousands of businesses to secure the lowest price. Is this acceptable?**

**A:** Recipients are always encouraged to pursue procurement methods that will provide the lowest reasonable cost for necessary project purchases. The utilization of NCTC to acquire project components is encouraged if it results in the lowest price for the recipient. However, recipients are still required to follow the CFR Procurement requirements in regard to soliciting pricing from multiple qualified vendors.