



Midcoast Regional Redevelopment Authority

Purchasing Policy

Policy and Purpose

The Midcoast Regional Redevelopment Authority (MRRA) will acquire equipment, materials, and services in a manner that results in the most efficient delivery of services considering cost and value received.

To avoid conflict of interest, procurement will be impartial. Procurement of goods and services will provide the MRRA with the best quality for the best value. Purchases will be made within budget limits and to meet goals and objectives approved in MRRA's budget. Potential purchases that are not within budget limits will be pre-approved through a budget amendment process.

This administrative manual establishes MRRA responsibilities and policies, procedures, and practices to follow to purchase equipment, materials, and services. All employees and Board members must follow established policies and procedures.

Adherence to policies and procedures will ensure that public purchases and contracts are open, fair, and produce the best value to the public.

Appropriation

Notwithstanding any other provision of this policy, Trustees or staff members are not authorized to spend money from funds or revenues that have not been appropriated by the Board of Trustees.

Procurement of Goods and Services

Purchasing Parameters

1. Purchases under \$3,500 may be made without soliciting competitive quotations if MRRA considers the price to be reasonable.

2. Purchases costing more than \$3,500 and less than \$25,000, require at least three telephone quotes, unless the item(s) are from a sole source vendor. Purchases in this price range require the approval of the Executive Director.
3. Purchases costing between \$25,000 and \$50,000 require written quotations from a minimum of three vendors unless the item(s) are from a sole source vendor. Purchases in this price range require the approval of the Executive Director.
4. Purchases of \$50,000 or more must satisfy the requirements of Item 2, above. Purchases of \$50,000 or more must be approved by the Executive Committee of the Board of Trustees with the exception of following indefinite delivery/indefinite quantity contracts:
 - a. General Maintenance and Repair Services (up to \$75,000 per project or building)
 - b. Exterior Electrical and High Voltage Services (up to \$75,000 per project or building) which will require the approval of the Executive Director and either the Chair of the Board or the Treasurer.
5. All bids for indefinite delivery and indefinite quantity contracts expected to exceed \$50,000 per calendar year shall be awarded by the Board of Trustees.

Utilizing Other Public Bids

Bidding by MRRRA is not required when purchases of materials, supplies, or equipment are made under State of Maine standard contracts or similar contracts executed by and through other public entities which have complied with appropriate procurement procedures and the vendor providing materials, supplies or equipment agrees to hold the bid price for the MRRRA.

Sole Source Procurement

If, after conducting a good faith review of available resources, the Executive Director determines that there is only one source of the required materials, supplies, or equipment, or professional services a purchase contract may be awarded without complying with established bid requirements.

This policy permits, under certain conditions, purchases of goods or services from a directed or sole source without soliciting bids from multiple sources. The Midcoast Regional Redevelopment Authority (MRRRA) recognizes that special circumstances may not support the use of competitive bidding. In these situations, directed or sole source purchases may be an acceptable alternative. Directed or sole source purchases are an exception to the MRRRA's competitive bidding policy and must always be in writing. The Executive Director will approve a directed or sole source purchase on a case-by-case basis of less than \$50,000 in writing and provide a notice to the Board of Trustees.

Directed source is a term used to designate that a product or service, for specific and justifiable reasons, will be purchased from one specified supplier. Following are examples of acceptable directed source purchases:

- ❑ The requested product is an integral part or accessory to existing equipment.
- ❑ The service requested is for existing equipment which can only be completed by the original manufacturer or manufacturer's designated service provider.
- ❑ The requested product or service has unique design, performance, and/or a quality specification that is essential to a particular protocol or need that is not available in comparable products.
- ❑ The requested product or service is essential in maintaining continuity of service.
- ❑ The requested service or system requires a supplier with unique skills or experience.

Sole source is a term used to designate that only one supplier exists that is capable of providing a particular product or service.

For directed and sole source purchases, MRRRA is responsible for evaluating alternative sources of supply and documenting the reasons that the purchase will be directed to a particular supplier or service provider when alternative sources are available. MRRRA is also responsible for verifying that prices paid for directed and sole source purchases are fair and reasonable.

Guest speakers, honoraria, subscriptions, dues, memberships and other similar items will be treated as sole source, and do not require sole source justification documentation.

Special Market Conditions

The Executive Director will consider waiving established bidding requirements if an opportunity arises to purchase favorably priced equipment at an auction or supplies or used goods that will be sold before the MRRRA can conduct the bid process. Purchases made under this paragraph over \$25,000 but less than \$50,000 shall be reported to the Board of Trustees. Purchases of \$50,000 or more will require action by the Board of Trustees.

Emergencies

In case of an emergency the Executive Director can waive bid requirements to purchase goods, materials, or services to stabilize the emergency condition. Purchase order(s) must be properly documented as an emergency as soon as possible following the event. The Executive Director shall notify the Chair of the Board and Treasurer of the purchase as soon as practical.

Within ten days of confirming the emergency existed, the Executive Director shall notify the Board of Trustees of his or her action. The MRRRA Board of Trustees will adopt a resolution

certifying the emergency situation existed for purchases totaling more than \$50,000 at its next regular meeting.

Contingency

The Board may appropriate funds to a Contingency Account within the annual operating budget. The purpose of the Contingency Account is to make funds available for unforeseen expenses that could not have been anticipated at the time of adoption of the annual budget. Contingency funds approved by the Board may be spent at the discretion of the Executive Director in accordance with this policy. Expenditures from the Contingency Account shall be included in the monthly budget report to the Finance Committee and Board of Trustees.

Check Signing

The Executive Director shall be authorized to sign checks up to \$50,000 . Checks in excess of \$50,000 shall require two signatures on the check: the signature of the Executive Director and the signature an authorized Board member such as the Chair, Vice Chair, Secretary or Treasurer . A second signature on a regular monthly utility invoices in excess of \$50,000 will not be required.

Compliance with 5 MRS §1202, Financial Policies and Procedures

For any procurement exceeding \$10,000 that was not competitively procured the Executive Director or designee must provide written justification to the Board and maintain that record for six years.

Midcoast Regional Redevelopment Authority
Federal Procurement Purchasing Policy

This Federal Procurement Purchasing Policy governs the procurement and purchase of property, goods, and services using any federal award, in whole or in part, that is subject to the *Uniform Grant Guidance, codified at 2 CFR Part 200*.

A. Overview

The Midcoast Regional Redevelopment Authority (MRRA) expects all procurements of property, goods, or services made by MRRA using federal awards to be consistent with sound business practices and applicable federal laws and rules, including the Uniform Grant Guidance.

These administrative procedures are intended to comply with the federal requirement that MRRA must (1) use its own documented procurement procedures which reflect applicable federal and state laws and regulations; and (2) maintain written standards of conduct covering conflicts of interest—real and perceived—for staff engaged in the selection, awarding, or administration of a contract. (2 CFR § 200.318(a), (c).)

The Executive Director or his or her designee, shall be responsible for implementing these administrative procedures and shall have direction and control over the purchasing of property, goods, and services for MRRA using federal funds. When a Board member participates in the selection, award, or administration of a contract that is supported by a federal award, the Board member shall also comply with this Policy and the Code of Conduct.

Wherever these administrative procedures are inconsistent with applicable federal laws and rules, or the terms and conditions of a federal award, the provisions of the applicable federal laws, rules, or award terms and conditions shall control.

A “federal award” is any federal financial assistance (including cost-reimbursement contracts) that MRRA receives either directly from a federal agency or indirectly from a pass-through entity such as the State of Maine. See 2 CFR § 200.38. Most, but not all, federal awards received by MRRA are subject to the Uniform Grant Guidance. To confirm whether a federal award is subject to the Uniform Grant Guidance, review the terms and conditions of the applicable grant agreement or cooperative agreement and the applicability provisions of the Uniform Grant Guidance, codified at 2 CFR § 200.101.

B. General Procurement Procedures

1. *Full and Open Competition.* All procurements must be conducted in a manner that provides full and open competition. Real or perceived unfair advantages will be avoided. Accordingly, MRRA will not (i) place unreasonable requirements on firms or vendors to qualify for a procurement, (ii) require unnecessary experience or use excessive bonding, (iii) use noncompetitive pricing practices between firms or affiliated companies, (iv) allow organizational conflicts of interest, (v) specify a “brand name” product without allowing firms or vendors to offer an equal alternate product, or (vi) allow any arbitrary action in the procurement process. To ensure objective contractor performance and eliminate unfair competitive advantage, firms or vendors that

develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals must be excluded from competing for such procurements. (2 CFR § 200.319(a).)

2. *Responsible Contractors.* MRRA must award contracts only to responsible contractors who are able to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. (2 CFR § 200.318(h).)

3. *Oversight of Contractors.* MRRA must maintain a contract administration and oversight system to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (2 CFR § 200.318(b).)

4. *Fostering Economy and Efficiency.* MRRA must avoid purchasing unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase, and to using federal surplus equipment and property. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. To foster greater economy and efficiency, consideration should also be given to: (i) entering into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services, (ii) using federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs, and (iii) using value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. (2 CFR § 200.318(d)-(g).)

5. *Geographical Preferences Prohibited.* MRRA must conduct procurements so as to prohibit the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except (i) where applicable federal statutes expressly mandate or encourage geographic preference or (ii) when contracting for architectural and engineering (A/E) services, so long as its application leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project. (2 CFR § 200.319(b).)

6. *Clear and Accurate Technical Requirements.* MRRA must have written selection procedures for procurements that incorporate a clear and accurate description of the technical requirements for the goods or services to be procured, identify all requirements which bidders or responders must fulfill, and identify all other factors to be used in evaluating solicitations. Technical descriptions (i) must not, in competitive procurements, contain features which unduly restrict competition; (ii) may include a statement of the qualitative nature of the goods or services to be procured; (iii) when necessary, must set forth those minimum essential characteristics and standards to which goods or services must conform if they are to satisfy their intended use; (iv) should avoid detailed product specifications if possible; and (v) may use a brand name or equivalent description as a means to define performance or other salient requirements of procurement when it is impractical or uneconomical to make a clear and accurate description of the technical requirements (the specific features of the named brand which must be met by bidders or responders must be clearly stated). (2 CFR § 200.319(c).)

C. Procurement Methods and Thresholds

1. *Methods of Procurement.* MRRA must use one of the following five methods of procuring goods or services: micro-purchases, small purchases, sealed bids, competitive proposals (a.k.a. requests for proposals), and non-competitive proposals (a.k.a. sole source procurement). (2 CFR § 200.320.)

- a. *Micro-purchases* (less than \$3,500 as of October 1, 2015). Micro-purchases up to the federal micro-purchase threshold (\$3,500 as of October 1, 2015) may be made without soliciting competitive quotations if MRRA considers the price to be reasonable. (2 CFR §§ 200.67, 200.320(a).)
- b. *Small Purchases* (\$150,000 or less as of October 1, 2015). Small purchases up to the federal simplified acquisition threshold (\$150,000 as of October 1, 2015) may be made using simple, informal procurement methods and without requiring sealed bids. For any such purchases, MRRA must obtain price or rate quotes from an adequate number of qualified vendors or firms (preferably, from at least three qualified vendors or firms). MRRA shall document any price or rate quotes received, whether written or oral. (2 CFR §§ 200.88, 200.320(b).)
- c. *Sealed Bids* (over \$150,000 as of October 1, 2015). For purchases in excess of the federal simplified acquisition threshold (\$150,000 as of October 1, 2015) where complete, adequate, and realistic specification or purchase description is available, MRRA shall issue a notice of written invitation for sealed bids in a manner reasonably calculated to attract qualified bidders and provide the bidders with sufficient response time. The invitation for bids shall provide a complete specification of the goods or services to be purchased. Bids shall be opened at the time and place prescribed in the invitation for bids. A firm fixed price (lump sum or unit price) contract award shall be made in writing to the lowest responsive and responsible bidder whose bid conforms to all material terms and conditions of the invitation to bid. Any or all bids may be rejected if there is a sound documented reason. (2 CFR §§ 200.88, 200.320(c).)
- d. *Requests for Proposals* (over \$150,000 as of October 15, 2015). For purchases in excess of the simplified acquisition threshold (\$150,000 as of October 1, 2015), when conditions are not appropriate for the use of sealed bids because the goods or services sought cannot be defined or specified such that bids will not be comparable, MRRA shall issue a request for proposals (“RFP”) to solicit the goods or services. Typically, the RFP seeks proposals that are evaluated qualitatively such that price is not the primary evaluation criterion. Contracts may be awarded on either a fixed price or cost-reimbursement basis. If this procurement method is used, the following requirements apply:
 - ❑ RFPs must be publicized in a manner reasonably calculated to attract qualified vendors or firms, and RFPs must identify all evaluation factors and their relative importance. Proposals shall be reviewed by the Executive Director, or his or her designee or a selection committee identified in the RFP. Any response to an RFP must be considered to the maximum extent practical;
 - ❑ Proposals must be solicited from at least two qualified sources; and

- ❑ MRRA shall award a contract to the responsible vendor or firm whose proposal is most advantageous to MRRA, with price and other factors considered; however, any and all proposals may be rejected if there is a sound documented reason.

MRRA may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, may only be used in procurement of A/E professional services. It cannot be used to purchase other types of services even if A/E firms are a potential source to perform the proposed effort. (2 CFR § 200.320(d).)

- e. *Non-Competitive Proposals (Sole Source); Emergencies.* Procurements may be made through a non-competitive process (i.e., through the solicitation of a proposal from only one source) only when one or more of the following circumstances apply:
 - ❑ The item is available only from a single source;
 - ❑ An exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - ❑ The federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request; or
 - ❑ After solicitation of a number of vendors or firms, competition is determined inadequate.

MRRA must document the basis for the sole source procurement by documenting the basis for any exigency or emergency, obtaining express authorization from the federal awarding agency or pass-through entity, or demonstrating a good faith effort on the part of MRRA to solicit proposals from a number of sources. (2 CFR §§ 200.320(e), 200.324(b)(2).)

2. *Purchases Over \$25,000.* For purchases exceeding \$25,000, prior to contracting with a vendor, MRRA shall use the System for Award Management (SAM) to search for the vendor by name, tax identification number, or another characteristic to make sure that the vendor has not been suspended or debarred from performing federally funded work. (2 CFR § 200.205.)

3. *Purchases Over the Simplified Acquisition Threshold* (\$150,000 as of October 1, 2015). The following additional procedures apply to purchases exceeding the simplified acquisition threshold:

a. *Cost/Price Analysis.*

- (i) MRRA must perform a cost or price analysis in connection with every procurement in excess of the simplified acquisition threshold, including contract modifications. The method and degree of analysis depends on the facts surrounding the particular situation, but as a starting point, MRRA must make independent estimates before receiving bids or proposals.

- (ii) MRRA 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.
- (iii) Costs or prices based on estimated costs for contracts under a federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable under Subpart E (Cost Principles) of 2 CFR Part 200. MRRA may reference its own cost principles that comply with the federal cost principles.
- (iv) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used. (2 CFR § 200.323.)

b. *Bonding Requirements.* For construction or facility improvement contracts or subcontracts in excess of the simplified acquisition threshold, the following bonds, or equivalent, are required:

- (i) A bid guarantee from each bidder equivalent to 5% 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 such contractual documents as may be required within the time specified;
- (ii) A performance bond on the part of the contractor for 100% of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- (iii) A payment bond on the part of the contractor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. (2 CFR § 200.325.)

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

MRRA must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be allowed, to take the affirmative steps listed in paragraphs (1) through (5) of this section. (2 CFR § 200.321.)

E. Contracts Arising from Procurements

1. *Contract Administrator.* Prior to the execution of a contract funded by a federal award, MRRRA should name a Contract Administrator. The Contract Administrator shall be responsible for the tasks, technical requirements, service performance, and verification that payments are in compliance with the contract. (2 CFR § 200.319.)
2. *Contract Provisions.* Any contract entered into between MRRRA and a firm or vendor who is to be compensated using a federal award or a portion thereof must contain the applicable contract provisions described in Appendix I. (2 CFR § 200.326.)
3. *Subrecipient and Contractor Determinations.* MRRRA must make case-by case determinations whether each agreement it makes for the disbursement of federal funds casts the party receiving the funds in the role of a subrecipient or a contractor. MRRRA shall make this classification using its judgment based on the following factors, as well as any additional guidance supplied by the federal awarding agency:
 - a. *Contractors.* A contract is for the purpose of obtaining goods and services for MRRRA's own use and creates a procurement relationship with the contractor. (See 2 CFR § 200.22.) Characteristics indicative of a procurement relationship between MRRRA and a contractor are when the contractor (i) provides the goods and services within normal business operations; (ii) provides similar goods or services to many different purchasers; (iii) normally operates in a competitive environment; (iv) provides goods or services that are ancillary to the operation of the federal program; and (v) is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.
 - b. *Subrecipients.* A subaward is for the purpose of carrying out a portion of a federal award and creates a federal assistance relationship with the subrecipient. (See 2 CFR § 200.92.) Characteristics which support the classification of a party receiving federal funds as a subrecipient include when the party (i) determines who is eligible to receive what federal assistance; (ii) has its performance measured in relation to whether objectives of a federal program were met; (iii) has responsibility for programmatic decision making; (iv) is responsible for adherence to applicable federal program requirements specified in the federal award; and (v) in accordance with its agreement, uses the federal funds to carry

out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

If the party receiving the funds is classified by MRRRA as a subrecipient, MRRRA must:

- (i) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information:

Federal Award Identification: (a) Subrecipient name (which must match the name associated with its unique entity identifier); (b) subrecipient's unique entity identifier; (c) Federal Award Identification Number (FAIN); (d) federal award date (see 2 USC § 200.39) of award to the recipient by the federal agency; (e) subaward period of performance start and end date; (f) amount of federal funds obligated by this action by MRRRA to the subrecipient; (g) total amount of federal funds obligated to the subrecipient by MRRRA including the current obligation; (h) total amount of the federal award committed to the subrecipient by MRRRA; (i) federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA); (j) name of federal awarding agency, MRRRA, and contact information for awarding official of MRRRA; (k) CFDA number and name (MRRRA must identify the dollar amount made available under each federal award and the CFDA number at time of disbursement); (l) identification of whether the award is research and development; and (m) indirect cost rate for the federal award (including if the de minimis rate is charged per 2 USC § 200.414).

All requirements imposed by MRRRA on the subrecipient so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the federal award.

Any additional requirements that MRRRA imposes on the subrecipient so as to meet its own responsibility to the federal awarding agency, including identification of any required financial and performance reports.

An approved federally recognized indirect cost rate negotiated between the subrecipient and the federal government or, if no such rate exists, either a rate negotiated between MRRRA and the subrecipient or a de minimis indirect cost rate as defined in 2 USC § 200.414(f).

A requirement that the subrecipient permit MRRRA and auditors to have access to the subrecipient's records and financial statements as necessary for MRRRA to meet the requirements of 2 USC § 331.

Appropriate terms and conditions concerning closeout of the subaward.

- (ii) Evaluate each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described below, which may include consideration of such factors as: (a) the subrecipient's prior experience with the same or similar subawards; (b) the result of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit

- Requirements—of 2 USC Part 200, and the extent to which the same or similar subaward has been audited as a major program; (c) whether the subrecipient has new personnel or new or substantially changed systems; and (d) the extent and results of federal awarding agency monitoring.
- (iii) Consider imposing specific subaward conditions upon a subrecipient as described in 2 USC § 200.207.
 - (iv) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. MRRRA monitoring of the subrecipient must include: (a) reviewing financial and performance reports required by MRRRA; (b) following up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the federal award provided to the subrecipient from MRRRA detected through audits, on-site reviews, and other means; and (c) issuing a management decision for audit findings as required by 2 USC § 200.521. Depending on MRRRA's assessment of risk posed by the subrecipient, the following monitoring tools may be useful to ensure proper accountability and compliance with program requirements and performance goals: (a) providing subrecipients with training and technical assistance; (b) performing on-site reviews of the subrecipient's program operations; and (c) arranging for agreed-upon-procedures engagements as described in 2 USC § 200.425 (audit services).
 - (v) Verify that each subrecipient is audited as required by Part F (Audit Requirements) of 2 USC Part 200 when it is expected that the subrecipient's federal awards expanded during the respective fiscal year equaled or exceeded the threshold set forth in 2 USC § 200.501.
 - (vi) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to MRRRA's own records.
 - (vii) Consider taking enforcement action against noncompliant subrecipients as described in 2 USC § 200.338.

F. Records

- a. *Recordkeeping.* MRRRA must maintain records sufficient to detail the history of procurement. Records must include the following: (i) rationale for the method of procurement, (ii) selection of contract type, (iii) contract selection or rejection, and (iv) the basis for the contract price.
- b. *Record Retention Requirements.* MRRRA must maintain records related to each federal procurement for a period of three years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the

submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or MRRA in the case of a subrecipient. The following exceptions apply:

- (i) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- (ii) When MRRA is notified in writing by the federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- (iii) Records for real property and equipment acquired with federal funds must be retained for 3 years after final disposition.
- (iv) When records are transferred to or maintained by the federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to MRRA.
- (v) Records for program income transactions after the period of performance. In some cases, federal fund recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of MRRA's fiscal year in which the program income is earned.
- (vi) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

If the proposal, plan, or other computation is required to be submitted to the federal government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

G. Protests and Claims

MRRA is solely responsible for the settlement of all contractual and administrative issues arising out of procurements of goods or services under federal awards. Except as may be otherwise provided in a written request for proposals or other solicitation of MRRA, these procedures are available to proposers for the purpose of handling and resolving disputes relating to such procurements, including evaluation and selection, protests of awards, disputes, and claims relating to the selection process and contract award. A protestor must exhaust all of these administrative remedies before pursuing a protest with the federal grant agency or in any court of law. For purposes of this section, the term "proposer" means any person or entity that has submitted a bid or a proposal in response to an RFP or other solicitation to MRRA, or a person or entity that is a prospective bidder or offeror and who has a demonstrated direct economic interest in the results of the procurement.

1. *Protest Submission Requirements.* To be considered by MRRA, a protest must be made in writing, supported by sufficient information to enable the protest to be fairly evaluated, and

submitted within the time periods set forth herein. At minimum, protests must include (i) the name, phone number, and address of the protester; (ii) identification of the detailed and specific provision(s) of applicable federal or state law which would be allegedly violated by the procurement; (iii) copies of all exhibits, evidence, or documents supporting the protest; and (iv) a concise description of all remedies or relief requested.

2. *Pre-Award Protests.* Pre-award protests are protests based upon the content of the solicitation documents. Any protest to the terms, conditions, or specifications set forth in a solicitation must be submitted to MRRA or the contract administrator, if a contract administrator is identified in the solicitation, within 5 calendar days after the issuance of the solicitation. All such protests will be considered by MRRA, or the contract administrator as appropriate, prior to the solicitation due date, and a written decision will be provided to the protestor. A decision of MRRA or contract administrator is final, and no further protest or appeal of the terms, conditions, or specifications of any solicitation will be considered by MRRA.

These protest procedures are not available to contractors or third parties for the purpose of handling and resolving disputes, claims or litigation arising in the course of contract formation or contract administration. Any such disputes claim, or litigation will be handled and resolved in accordance with applicable contract terms, if any, and applicable law.

3. *Protests of Proposal Evaluations and Award Decision.* Proposers shall be notified of any award decision by a written or oral notice of the award. This notice shall be transmitted to each proposer at the address, email address, or telephone number contained in its proposal. Any proposer whose proposal has not lapsed may protest an award decision on any ground arising from the evaluation of proposals or the award decision, but not on any ground specified in the “Pre-Award Protests” category, above. Any such protest must be submitted to MRRA or the contract administrator, if a contract administrator is identified in the solicitation, within three calendar days after notice of the award. All such protests will be considered by a Protest Review Subcommittee, composed of members selected by MRRA in its sole discretion. A written decision from the Protest Review Subcommittee stating the grounds for allowing or denying the protest shall be transmitted to the protestor before a final contract award is made. A decision of the Protest Review Subcommittee is final, and no further protest or appeal will be considered by MRRA.

H. Federal Awarding Agency or Pass Through Entity Review

1. MRRA must make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.
2. MRRA must make available upon request, for the federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates.

Legal Reference: 2 CFR Part 200 (Uniform Administrative Requirements) (for federal awards made on or after 12/26/2014)

Appendix I. Required Contract Provisions for Purchases Using Federal Funds

All contracts made by MRRRA for the procurement of property, goods, or services using a federal award must contain provisions covering the following, as applicable:

- A. *Remedies (over \$150,000)*. Contracts for more than the simplified acquisition threshold (currently \$150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and must provide for such sanctions and penalties as appropriate.
- B. *Termination for Cause and Convenience (over \$10,000)*. All contracts in excess of \$10,000 must address termination for cause and for convenience by MRRRA, including the manner by which it will be affected and the basis for settlement.
- C. *Equal Employment Opportunity*. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.360-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. *Davis-Bacon Act, Copeland “Anti-Kickback” Act (construction contracts over \$2,000)*. When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by MRRRA must include a provision for compliance with the Davis Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. MRRRA must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. MRRRA must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. MRRRA must report all suspected or reported violations to the Federal awarding agency.
- E. *Contract Work Hours and Safety Standards Act (over \$100,000)*. Where applicable, all contracts awarded by MRRRA in excess of \$100,000 that involve the employment of

mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- F. *Rights to Inventions Made Under a Contract or Agreement.* If the federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. *Clean Air Act; Federal Water Pollution Control Act (over \$150,000).* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. *Debarment and Suspension.* A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. *Byrd Anti-Lobbying Amendment (over \$100,000).* Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

Appendix II. Code of Conduct

Conflict of Interest

All employees of MRRRA shall perform their duties in a manner free from conflicts of interest to ensure that MRRRA's business transactions are made in compliance with applicable laws and regulations and in a manner that maintains public confidence in its operations.

No employee, officer, or agent of MRRRA may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest.

A conflict of interest would arise when the employee, officer, or agent—or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein—has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

For the purpose of this policy, “immediate family” is defined as spouse, brother, sister, parent, son, or daughter.

All employees, officers, or agents with real or apparent conflicts of interest as defined above must disclose the conflict of interest to the Executive Director who will investigate the circumstances of the proposed transaction. The Executive Director will exercise due diligence in investigating the circumstances of the transaction and, if necessary, will make reasonable efforts to find alternatives to the proposed transaction or arrangement that would not give rise to a conflict of interest. If the Executive Director determines that the proposed transaction is in the best interest of MRRRA and is fair and reasonable, he or she may proceed with the transaction. In the event that the Executive Director may have a conflict of interest, the Board of Trustees of MRRRA will investigate and make a determination regarding the transaction.

Gifts and Solicitations [Required Provision:]

The employees, officers, and agents of MRRRA may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Employees, officers, and agents of MRRRA may accept unsolicited items of nominal value such as those that are generally distributed by a company or organization through its public relations program.

Violations

Employees of MRRRA who violate this code of conduct may be subject to discipline, up to and including termination of employment and, if appropriate, referral to law enforcement. Trustees who violate this code of conduct following a finding of the Board will be reported to the Governor's office and may be subject to termination from the Board of Trustees by action of the Governor.

Dispute Resolution

Any dispute arising from this section will be settled by the terms of Section G, Protests and Claims of the Federal Procurement Purchasing Policy.

2 CFR § 200.318 (Uniform Administrative Requirements—General Procurement Standards) (for federal awards made on or after 12/26/2014)

The Purchasing Policy was adopted by the MRRA Board of Trustees on February 19, 2008 and amended on the 17th day of June, 2008; then again on March 15, 2011; and then on the 28th day of July 2012, the 19th day of February 2020 and further amended on the 24th day of June 2020.