

Chapter 95

Procurement Policy for Carroll County

- I. The purpose of this policy is to provide clear guidelines for procurements in Carroll County that comply with federal requirements as stated in statute 2 CFR 200.318 – 200.327
- II. Procurement

Carroll County will follow these guidelines when procuring property and services under a federal award.

- 1. The Conflict-of-Interest policy must be followed.
- 2. To avoid acquisition of unnecessary or duplicative items, consideration should be given to consolidate or break apart procurements to obtain the most economical approach.
- 3. The use of state and local intergovernmental agreements or inter-entity agreements, where appropriate, for procurement or use of common or shared goods and services is encouraged.
- 4. The purchase of Federal and State excess and surplus property in lieu of new is encouraged.
- 5. The purchase of American made products is encouraged.
- 6. Carroll County is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
- 7. Carroll County must award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
- 8. Carroll County 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.
- 9. Carroll County will not award contracts to parties on the governmentwide exclusion list in the System for Award Management (SAM)
- 10. Carroll County must maintain records to detail the history of procurement which include but not limited to rationale for the method of procurement, selection of contract type, contractor selection or rejection and basis for contract type.
- 11. Carroll County will ensure that procurement transactions are conducted in a manner that provides full and open competition consistent with standards outlines in 2CFR 200.320.

III. Procurement Methods

All purchases must follow guidelines 1-11 when conducting procurement.

- a. Informal Procurement method: the following methods can be used when the value of the procurement is under the Simplified Acquisition Threshold.
 - i. Micro-Purchases are used when procuring services, supplies or equipment are less than \$10,000. No bid or quote required if price is considered reasonable based on past purchases or requesting prices from more than one vendor.
 - ii. Small Purchases are used when procuring services, supplies or equipment are greater than \$10,001 but less than \$250,000 (the Simplified Acquisition Threshold). Price or rate quotes must be obtained from at least 2 sources. All

quotes including phone calls, web searches etc. must be documented and kept on file. Price does not need to be the deciding factor, but all quotes must be kept in procurement records.

- b. Formal Procurement Methods: When the value of procurement for property or services exceeds the simplified acquisition threshold in the amounts of \$250,001 or more the following methods are used.
 - i. Sealed Bid can be used when the the procurement price is greater than the Simplified Acquisition Threshold, \$250,001 and greater. For Sealed Bidding to be feasible the following conditions should be present:
 - 1. A complete, adequate, and realistic specification or purchase is available.
 - 2. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - 3. A firm fixed price contract and selection of the successful bidder can be made principally based on price.

If sealed bids are being used, the following requirements apply:

- 4. Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids. For Local and Tribal governments, the invitation for bids must be publicly advertised.
 - 5. The invitation for bids must include any specific and pertinent attachments, must define the items or services for the bidder to properly respond.
 - 6. All bids will be opened at the time and place prescribed in the invitation for bids. For Local and Tribal governments, the bids must be opened publicly.
 - 7. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - 8. Any or all bids may be rejected if there is a sound documented reason.
 - ii. Proposals. This method is used when either a fixed price or cost-reimbursement type contract is awarded. Proposals are used when conditions are not appropriate for the use of sealed bids, and are awarded when in accordance with the following requirements:
 - 1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized

requests for proposals must be considered to the maximum extent practical.

2. Carroll County must have a written method for conducting technical evaluations of the proposals received and making selections.
3. Contracts must be awarded to the responsible offeror whose proposal is most beneficial to Carroll County with price and other factors considered; and
4. Carroll County may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services where qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation.
 - a. The method where price is not used as a selection factor can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services even though A/E firms are a potential source to perform the proposed effort.

- c. Non-competitive procurement. There are specific circumstances in which noncompetitive procurement can be used and can only be awarded if one or more of the following circumstances apply:

1. The acquisition of property or services total dollar amount does not exceed the micro-purchase threshold as stated in the informal procurement method.
2. The item is available only from a single source.
3. The public urgency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.
4. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from Carroll County; or
5. After solicitation of several sources, competition is determined inadequate.

IV. Contracting, Costs, procurement preferences, and recovered materials.

- i. Carroll County must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Such steps include:
 1. Placing qualified small and minority business 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 the small and minority business 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 let, to take the affirmative steps listed in paragraphs (i.) (1) through (5) of this section.
- ii. Carroll County must perform a cost or price analysis in connection with every procurement action more than the Simplified Action Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the procurement situation but as a starting point Carroll County must make independent estimates before receiving bids or proposals.
 - iii. Carroll County must negotiate profit as a separate element of the price for each contract when 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:
 1. the complexity of the work to be performed,
 2. The risk borne by the contractor, the contractor's investment, and the amount of subcontracting,
 3. The quality of its record of past performance, and
 4. Industry profit rates in the surrounding geographical area for similar work.
 - iv. 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. Carroll County may reference its own cost principles that comply with the Federal cost principles. Cost plus a percentage of a cost and percentage of construction cost methods of contracting must not be used.
 - v. Carroll County should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement must be included in all subawards including all contracts and purchase orders for work or products under this award.
 - vi. Carroll County and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements include:
 1. Procuring only items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.
 2. Procuring items consistent with maintaining a satisfactory level of competition where the purchase price of the item exceeds \$10,000 or

the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

3. Procuring solid waste management services in a manner that maximizes energy and resource recovery; and
4. Establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

V. Bonding requirements

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of Carroll County provided that the Federal awarding agency or pass-through entity has determined that the Federal interest is adequately protected. If said determination has not been made, then the minimum requirements must be as follows:

- i. A bid guarantee from each bidder that is equivalent to five percent of the bid price. The “big 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 execute such contractual documents as required within a specified time upon acceptance of said bid.
- ii. A performance bond on the part of the contractor for 100 percent of the contract price. This bond is executed in connection with a contract to secure fulfillment of all the contractor’s requirements under this contract.
- iii. A payment bond on the part of the contractor for 100 percent of the contract price. This bond is executed in connection with a contract to assure payment is required by law of all persons supplying labor and material in the execution of the work provided in the contract.

VI. Federal awarding agency or pass-through entity review.

Carroll County must make the following available upon request of the Federal awarding agency or pass-through entity for review:

- i. Technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes a review is needed to ensure that an item or service specified is the one being proposed for acquisition. Carroll County may desire to have the review accomplished after a solicitation has been developed and the Federal awarding agency or pass-through entity may still review the specifications usually limited to the technical aspects of the proposed purchase.
- ii. pre-procurement reviews of procurement documents such as requests for proposals or invitations or bids, or independent costs when:
 1. Carroll County’s procurement procedures or operation fails to comply with the procurement standards.
 2. The procurement is expected to exceed the Simplified Acquisition Threshold (SAT) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

3. The procurement, which is expected to exceed the SAT, specifies a “brand name” product.
 4. The proposed contract is more than the SAT and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the SAT.
- iii. Carroll County may be exempt from pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the following standards:
1. Carroll County requests that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. These reviews must occur where there is continuous high-dollar funding and third-party contracts are awarded on a regular basis.
 2. Carroll County may self-certify its procurement system. Such self-certification must not limit the Federal awarding’s right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from Carroll County that its complying with these standards. Carroll County must cite specific policies, procedures, and regulations or standards as being compliant with these requirements and have its system available for review.
- VII. Contract Provisions. Carroll County’s contracts must contain provisions described below:
- i. Contracts for more than the Simplified Acquisition Threshold, as authorized by [41 U.S.C. 1908](#), 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.
 - ii. All contracts in excess of \$10,000 must address termination for cause and for convenience by Carroll County including the manner by which it will be affected and the basis for settlement.
 - iii. 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 60–1.3](#) 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.”
 - iv. Davis-Bacon Act, as amended ([40 U.S.C. 3141–3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by Carroll County 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”).

1. 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.
 2. Carroll County 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.
 3. Carroll County 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.
 4. Carroll County must report all suspected or reported violations to the Federal awarding agency.
- v. Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701–3708](#)). Where applicable, all contracts awarded by Carroll County 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.
- vi. 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.

- vii. Clean Air Act ([42 U.S.C. 7401–7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251–1387](#)), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply 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).
- viii. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide 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.
- ix. Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#))—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. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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Approved



Joseph Payette, Chairman
Carroll County Board

Attest



Amy R. Buss
Carroll County Clerk