



Friends of Deckers Creek Procurement Procedures

References to Title 2 CRF 200.317-200.326 appear in brackets

(For internal use only)

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I. Procurement Procedure Standards

Friends of Deckers Creek (FODC) has adopted the following procurement procedures in order to ensure compliance with Federal standards when administering Federal funds, and to ensure cost effective operation for all FODC projects. These procurement procedure standards are based on the Electronic Code of Federal Regulations (e-CFR) Title 2: Grants and Agreements, Part 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart D: Post Federal Award Requirements. [200.318(a)]

Friends of Deckers Creek is solely responsible for contractual fulfillment arising from procurement of goods or services associated with awarded funds. This includes disputes, claims, award protests, source evaluation, or other matters of a contractual nature. In addition, FODC will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. [200.318(b)]

II. Code of Conduct

Friends of Deckers Creek will use the following code of conduct regarding the performance of employees engaged in the award and administration of contracts. FODC and its agents shall not be involved in the selection, award, or administration of a contract if a real, perceived, or apparent conflict of interest should arise. Such conflicts would arise when the employee, his or her partner/spouse, or a direct member of his or her family, or an organization which employs or is about to employ any of the parties under a potential FODC contract has a financial interest or other interest in the firm selected for award. In addition, FODC staff, agents, or assigns will neither solicit nor accept gratuities, favors, or any item of monetary value from its contractors, or any party under a sub-agreement to a contract with a few exceptions noted below. Unsolicited gifts should be returned to the donors. Friends of Deckers Creek will allow exceptions for the following:

1. A plaque or an award;
2. Items of insignificant value that are commonly given to everyone (e.g., key chains, T-shirts, coffee mugs, bags, etc.);
3. Informational materials (e.g., reports, booklets, audio, or video tapes, etc.);

4. Goodwill exchange gifts when FODC officials are visiting outside locations, institutions, meetings, etc. Because a refusal of a gift could offend the hosting officials, such gifts can be accepted. If the gifts are of significant value (i.e. greater than \$100), they become the property of FODC and should be discussed with the board of directors;
5. Business meals with a prospective party or at professional meetings and conferences are allowed if FODC gains from such attendance. For example:
 - a. When visiting the parties business as part of an investigation of their capability to service FODC or to review a new product or new facilities;
 - b. When continuing discussions with a vendor through mealtime has particular merit.
6. Incidental courtesies such as car rides;
7. Monetary compensation for items open for public purchase through FODC and when there is a clear expectation of what item is to be received. These items include but are not limited to FODC merchandise, items purchased at fundraising events, etc.

Violating this code of conduct will result in a full disclosure to the FODC board of directors and possible disciplinary actions including termination of employment. Should an entity such as an affiliate or subsidiary organization arise from FODC, such entity will also maintain written standards of conduct covering organizational conflicts of interest. [200.318(c)]

Friends of Deckers Creek will avoid purchasing unnecessary or duplicative items. Where appropriate, a cost/benefit analysis will be made of lease and purchase alternatives to determine which would be the most economical and practical approach. [200.318(d)]

Whenever possible, Friends of Deckers Creek will partner with state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. [200.318(e)]

Whenever possible, Friends of Deckers Creek will use federal excess and surplus property in lieu of purchasing new equipment and property in order to reduce project costs. [200.318(f)]

Whenever possible, FODC will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. [200.318(g)]

Friends of Deckers Creek will make awards only to licensed, responsible, and qualified contractors that possess the ability 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 technical and financial resources. [200.318(h)]

Friends of Deckers Creek will maintain records showing the procurement history for each project. The history will include: rationale and method of procurement; contract type selection; contractor selection or rejection determination(s); and the basis for contract price. [200.318(i)]

If a time and material type contract is considered for a project, the negotiated contract will include a ceiling price that the contractor exceeds at its own risk. [200.318(j)]

Friends of Deckers Creek will be responsible for the settlement of all contractual and administrative issues arising from contractual procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. Violations of law will be referred to the local, State or Federal authority having proper jurisdiction. In the event of a dispute between Friends of Deckers Creek and a contractor, the two parties will negotiate a resolution and describe that resolution in a written document agreeable to both parties, and signed by both parties. If the parties fail to reach a resolution, they may agree on an arbitrator. If the conflict cannot be resolved by these means, the contract will be declared null and void. [200.318(k)]

III. Competition

Friends of Deckers Creek shall conduct all procurement transactions in a manner that provides open and free competition. FODC will avoid actions that are considered restrictive of competition such as [200.319(a)]:

1. Placing unreasonable requirements on firms in order to qualify the firm to do business;
2. Requiring unnecessary experience and/or excessive bond fees;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive contracts to consultants that are on retainer contracts;
5. Organizational conflicts of interest;
6. Specifying only a brand name product instead of allowing an equivalent product to be ordered and describing the performance of other relevant requirements of the procurement¹; and
7. Any arbitrary action in the procurement process.

Friends of Deckers Creek and its contractors will not impose in-State or local geographical preferences in the evaluation of bids or proposals. A firm's geographic location may be a selection criterion provided that its application as a criterion allows for an appropriate number of qualified firms to compete for the contract. [200.319(b)]

Solicitations and invitations to bid shall clearly describe requirements for the materials, products, or services to be procured, and will identify all requirement which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. [200.319(c)]

Friends of Deckers Creek will 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. Any firm may submit credentials seeking qualifications to FODC at any time, and FODC will keep an evaluation of those credentials on file for review by the granting agency. [200.319(d)]

¹ For example, instead of specifying a brand name "Aquafix" doser, FODC should specify a chemical dispensing unit that can dispense a certain type of chemical given flow rates ranging from 10 to 150 gallons per minute.

IV. Procurement Methods

Friends of Deckers Creek will use the procurement methods described below, and will maintain records justifying any changes from the outlined procurement methods.

A. Micro-Purchase Procurement Methods [200.320(a)]

The acquisition of supplies or services that do not exceed the micro-purchase threshold of \$3,000 may be awarded without soliciting competitive quotations if the price is reasonable. To the extent practicable, FODC will distribute micro-purchases equitably among qualified suppliers.

B. Small Purchases Procurement Methods [200.320(b)]

When appropriate, FODC will use procurement by small purchase procedures to procure goods or services costing no more than \$150,000. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

C. Procurement by Sealed Bids [200.320(c)]

A sealed bids procurement method will generally be used to identify contractors for construction projects that have been designed by an engineering firm. Public advertisement will be used for announcing the award of a sealed bid where a fixed-price contract is awarded to a responsible, qualified bidder considering the demonstration of specific experience and qualifications whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price.

The sealed bids procurement procedure will be used if the following conditions are met: [200.320(c)(1)]

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. The procurement lends itself to a fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

The following requirements will be met if the sealed bid procurement procedure is used: [200.320(c)(2)]

1. The invitation for bids will be publically advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to submit bids prior to the advertised bid-opening date;
2. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
3. All bids will be publicly opened at the time and place described in the invitation for bids;

4. A firm fixed-price contract award will be made in writing to the lowest responsive, responsible, and qualified bidder. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discussions will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
5. Any or all bids may be rejected at the sole discretion of FODC if there is a sound, documented reason.

D. Procurement by Competitive Proposals [200.320(d)]

Friends of Deckers Creek may seek competitive proposals from an adequate number of qualified bidders, if possible, considering the demonstration of specific experience and qualifications for either a fixed-price or cost-reimbursement type contract when conditions are not appropriate for the use of sealed bids, given that the following requirements apply:

1. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
2. FODC will conduct a price analysis in connection with every procurement action. In general, these will be contained in proposal documents with which FODC received agency support. If they are not included in such documents, an analysis will be provided; and
3. Awards will be made to the responsible firm whose proposal is most advantageous to the program. Price, previous experience with FODC, and other factors will be considered.

E. Qualifications Based Procurement for Architectural and Engineering and Legal Services

Friends of Deckers Creek will generally procure architectural and engineering and legal services through a competitive, qualifications-based process. Architectural and engineering and legal firms may submit credentials seeking qualifications to FODC at any time or when solicited by FODC. Friends of Deckers Creek will keep an evaluation of those credentials on file for review by the granting agency. Submitted proposals will be reviewed and evaluated, and FODC may request additional information from firms through in-person interviews. The price may be negotiated with the highest qualified firm to provide fair and reasonable compensation and maximize contract value with price and other factors considered. In the event an acceptable price cannot be negotiated, FODC will begin negotiations with the next qualified firm. The final award will be made to the qualified, reasonable firm whose proposal is most advantageous to the program with price, prior experience, and other factors considered.

Procurement of Design Build Services [Based on the West Virginia Design-Build Act, WV Code Chapter 05 Article 22A]

Friends of Deckers Creek may procure a single contract for design, construction, or alteration in which services are within the scope of the practice of professional engineering, are performed by an engineer duly licensed in the State of West Virginia and in which services within the scope of construction contracting, and are performed by a contractor qualified and licensed under the applicable statutes. [§5-22A-2(3)]

In the procurement of design-build services, competition shall be sought by FODC. Friends of Deckers Creek shall conduct discussions with an adequate number of professional firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract. [§5G-1-4]

Prior to FODC issuing an invitation for qualifications for a project, the Project Manager must determine that the project is appropriate as a design-build project in accordance with the following: [§5-22A-5]

1. Friends of Deckers Creek requires a project design and construction time line that is faster than the traditional design-bid-build process would allow; and
2. The project requires close coordination of design and construction expertise or an extreme amount of coordination.

Design-builder qualifications; duties and powers: [§5-22A-7]

1. Each design-builder shall be licensed to do business in West Virginia and be a licensed engineer or general contractor.
2. Each design-builder may:
 - a. Assign or sublet the responsibility for professional design services to an engineer licensed in West Virginia. The engineer shall carry, at all times, professional design liability insurance in an appropriate amount as designated by FODC. The engineer may be a full or part-time employee of the design-builder; and
 - b. Assign or sublet responsibility for construction or other services requiring a contractor's license to persons or entities licensed or otherwise qualified to provide those services in West Virginia.
3. Each design-builder may contract to provide professional services or construction services to FODC that the design-builder is not licensed, registered, or otherwise authorized to provide so long as those services are assigned or sublet to a firm that is registered, licensed, and qualified to provide those services.

Friends of Deckers Creek will prepare an invitation for proposals (RFP) for the qualified design-builders, which will provide at a minimum: [§5-22A-10]

1. The procedures to be followed for submitting proposals, the criteria for evaluation of proposals, and the procedures for making awards;
2. The proposed terms and conditions for the design-build contract;
3. The performance criteria;

4. The description of the drawings, specifications, or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;
5. A schedule for planned commencement and completion of the design-build contract;
6. The budget limits for the design-build contract, if any;
7. Requirements or restrictions for subletting of specific portions of the design-build contract, if any; and
8. Requirements for performance bonds, payment bonds, insurance, professional liability insurance and workers' compensation coverage.

F. Proposals for design-build services [[§5-22A-11]

1. Proposals shall be submitted in two separate, clearly identified, sealed packages, with the first containing the technical submission and the second containing the cost submission. Technical and construction submissions will each have their own due dates specified within the Request for Proposals (RFP). The technical proposal will include a total price estimate for engineering and construction services, while the construction submission will include a breakdown of construction costs.
2. Proposals may not be opened until expiration of the time established for making proposals as set forth in the RFP.
3. The design-builder shall furnish a bid bond not to exceed five percent of the maximum cost of the design-build contract. In the event the proposal is accepted and the design-builder fails to execute the design-build contract, the bid bond will be forfeited.
4. To the extent required in the RFP, the design-builder shall identify each firm to whom the design-builder proposes to sublet obligations under the design-build contract. At a minimum, the design-builder shall identify each firm responsible for the design and primary construction and their affiliation to the design-builder.
5. The design-builder shall specify in the proposal the cost of the design-build contract that will not be exceeded if the proposal is accepted without change. After award of the proposal, the maximum cost of the proposal may be converted to fixed prices by negotiated agreement between Friends of Deckers Creek and the design-builder.
6. Prior to the award of the design-build contract, all drawings, specifications and other information submitted in the proposal shall remain the property of the design-builder submitting the proposal. Additionally, prior to the award of the design-build contract, Friends of Deckers Creek shall maintain the secrecy and confidentiality of all information contained in the proposal. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications and information therein, shall be determined in accordance with existing law and terms of the design-build contract.
7. Proposals may not be amended during the review process.

Acceptance of design-build proposal [§5-22A-12]

1. After receiving the proposals, they will be reviewed based upon the criteria and procedures set forth in the RFP. Friends of Deckers Creek shall make the written reviews of the technical submissions available for public review.
2. Friends of Deckers Creek shall open the cost submissions and accept the proposal that best demonstrates the project needs at a manageable price.
3. Friends of Deckers Creek shall notify the design-builder in writing that he proposal is accepted. At the same time notice of acceptance is delivered, Friends of Deckers Creek shall also inform, in writing, the design-builders whose proposals were not accepted. When a design-builder receives notification that its proposal was not accepted, the design-builder may, within three days after receipt of such notification, request in writing a copy of the scores and all other factors used or considered in the selection process.

G. Procurement by a Single Noncompetitive Proposal [200.320(f)]

Friends of Deckers Creek may procure goods and services through the solicitation of a proposal from only one source when the award of the contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

1. The item is available only from one source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. An awarding agency authorizes noncompetitive proposals for awarded funds; or
4. After solicitation of a number of sources, competition is determined inadequate.

In the event that procurement by noncompetitive proposals is necessary, FODC shall provide adequate justification for the award of a sole-sourced bid including the required specifications of the goods or services.

IV. Contractual Requirements

A. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms [200.321]

Efforts shall be made by FODC to utilize disadvantaged business enterprises (DBE) such as small businesses, minority-owned business enterprises (MBE), and women-owned business enterprises (WBE), whenever possible, especially where the projects are funded by federal grants and have stated goals in the cooperative agreement. The prime contractor will be requested to give the same consideration in awarding subcontracts. The following efforts shall be made by FODC in order to utilize DBEs:

1. Small businesses in rural areas (SBRA) will be placed on solicitation lists;
2. Small businesses in rural areas will be solicited whenever they are potential sources;

3. When economically feasible, FODC will divide the total requirements into small tasks or quantities to promote maximum participation by SBRAs;
4. Friends of Deckers Creek will establish delivery schedules, where the work will permit, which will encourage participation by SBRAs; and
5. When appropriate, FODC will use the services of the small business administration, the Minority Business Development Agency, and the Minority Business Development Agency of the U.S. Department of Commerce.

Friends of Deckers Creek shall request that the prime contractor, or any subcontractors utilized, disclose any instances where they have ever been or are currently debarred, suspended, or under investigation by any federal, state, or local agency, and, if applicable, provide a detailed explanation.

Friends of Deckers Creek shall include a non-conflict of interest form to all completed bid packages.

B. Contract cost and price [200.323]

Friends of Deckers Creek will remain consistent with Subpart E – Cost Principles and will conduct a cost/benefit analysis in connection with every procurement action. In general, these analyses will be contained in proposed documents where the project is funded with Federal or State grant funds. If they are not included in such documents, an analysis will be provided. In addition, cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

C. Awarding agency review [200.324]

All documents and records described herein will be made available to and awarding agency upon request.

D. Bonding requirements [200.325]

The awarding agency will be invited to review the bonding arrangements for construction contracts, including a bid guarantee, a performance bond, and a payment bond. The awarding agency may delay starting work dates until bonding arrangements have been made satisfactory. When acquiring bonds is necessary, at a minimum, FODC will require the following:

1. All bids will require a bid bond equivalent to five percent of the bid price.
2. A performance bond equivalent to 100 percent of the contract price.
3. A payment bond equivalent to 100 percent of the contract price.

E. Contract provisions [200.326]

As appropriate, FODC's contracts will include the following provisions:

1. Stated compliance of contractor with any applicable terms and conditions of any Federal Cooperative Agreement with FODC;

2. Remedies and/or penalties in instances where contractors violate or breach contract terms;
3. Termination for cause and/or convenience by FODC or its contractor;
4. Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CRF chapter 60);
5. Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CRF Part 3);
6. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CRF Part 5);
7. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 – 330) as supplemented by Department of Labor regulations (29 CRF Part 5);
8. Notice of awarding agency requirements and regulations pertaining to reporting;
9. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of, or under such contract;
10. Awarding agency requirements and regulations pertaining to copyrights and rights in data;
11. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specified contract for the purpose of making audit, examination, excerpts, and transcriptions;
12. Retention of all required records for a minimum of three (3) years after grantees or subgrantees make final payments and all other pending matters are closed including any litigation;
13. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Water Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CRF Part 15);
14. Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94 – 163, 89 Stat. 871);
15. Compliance with Title 40 CRF Part 34 – New Restrictions on Lobbying; and agreement with the Prohibition Statement;
16. Contracts in excess of \$150,000 will address administrative, contractual, or legal remedies in instances where contractors violate contract terms;
17. Contracts in excess of \$10,000 will address termination for cause and convenience;
18. A contract will not be awarded to parties listed on the governmentwide Excluded Parties List System.