§ 2543.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 2543.40 Purpose of procurement standards.

Sections §2543.41 through §2543.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 2543.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 2543.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, 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 the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 2543.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall...
be excluded from competing for such procurements. Awards shall be made to
the bidder or offeror whose bid or offer is responsive to the solicitation and is
most advantageous to the recipient, price, quality and other factors consid-
ered. Solicitations shall clearly set forth all requirements that the bidder
or offeror shall fulfill in order for the bid or offer to be evaluated by the re-
cipient. Any and all bids or offers may be rejected when it is in the recipient’s
interest to do so.

§ 2543.44 Procurement procedures.
(a) All recipients shall establish written procurement procedures. These
procedures shall provide for, at a mini-

(b) Positive efforts shall be made by
recipient to utilize small businesses,
minority-owned firms, and women’s
business enterprises, whenever pos-
sible. Recipients of Federal awards
shall take all of the following steps to
further this goal:
(1) Ensure that small businesses, mi-
nority-owned firms, and women’s busi-
ness enterprises are used to the fullest
extent practicable.
(2) Make information on forthcoming
opportunities available and arrange
time frames for purchases and con-
tracts to encourage and facilitate par-
ticipation by small businesses, minor-
ity-owned firms, and women’s business
enterprises.
(3) Consider in the contract process
whether firms competing for larger
contracts intend to subcontract with
small businesses, minority-owned
firms, and women’s business enter-
prises.
(4) Encourage contracting with con-
sortiums of small businesses, minority-
owned firms and women’s business en-
terprises when a contract is too large
for one of these firms to handle individ-
ually.
(5) Use the services and assistance, as
appropriate, of such organizations as
the Small Business Administration and
the Department of Commerce’s Minor-
ity Business Development Agency in
the solicitation and utilization of
small businesses, minority-owned firms
and women’s business enterprises.
(c) The type of procuring instruments
used (e.g., fixed price contracts, cost
reimbursable contracts, purchase or-
ders, and incentive contracts) shall be
determined by the recipient but shall
be appropriate for the particular pro-
curement and for promoting the best
interest of the program or project in-
volved. The “cost-plus-a-percentage-of-
cost” or “percentage of construction
cost” methods of contracting shall not
be used.
(d) Contracts shall be made only with
responsible contractors who possess
the potential ability to perform suc-
cessfully under the terms and condi-
tions of the proposed procurement.
Consideration shall be given to such
matters as contractor integrity, record
of past performance, financial and
technical resources or accessibility to