§ 1210.43 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.

§ 1210.44 Procurement procedures.

(a) All recipients shall establish writ-
ten procurement procedures. These
procedures shall provide for, at a mini-
imum, that paragraphs (a) (1), (2) and
(3) of this section apply.

(1) Recipients avoid purchasing un-
necessary items.

(2) Where appropriate, an analysis is
made of lease and purchase alter-
natives to determine which would be
the most economical and practical pro-
curement for the Federal Government.

(3) Solicitations for goods and serv-
ices provide for all of the following.

(i) A clear and accurate description
of the technical requirements for the
material, product or service to be pro-
cured. In competitive procurements,
such a description shall not contain
features which unduly restrict com-
petition.

(ii) Requirements which the bidder/
offeror must fulfill and all other fac-
tors to be used in evaluating bids or
proposals.

(iii) A description, whenever prac-
ticable, of technical requirements in
terms of functions to be performed or
performance required, including the
range of acceptable characteristics or
minimum acceptable standards.

(iv) The specific features of “brand
name or equal” descriptions that bid-
ders are required to meet when such
items are included in the solicitation.

(v) The acceptance, to the extent prac-
ticable and economically feasible,
of products and services dimensioned in
the metric system of measurement.

(vi) Preference, to the extent prac-
ticable and economically feasible, for
products and services that conserve
natural resources and protect the envi-
ronment and are energy efficient.

(b) Positive efforts shall be made by
recipients 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 when a contract is too large
for one of these firms to handle individ-
ually.

(4) Encourage contracting with con-
sortiums of small businesses, minority-
owned firms and women’s business en-
terprises.

(5) Use the services and assistance, as
appropriate, of such organizations as
the Small Business Administration and
the Department of Commerce’s Minority
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