

# PART I

## General Procurement Policy

The overall purpose of this Procurement Policy is to ensure that the Association for the Study of African American Life and History (ASALH) acquires the highest quality of desired goods and services at the most economical price.

### Procurement Planning

Procurement planning is a part of the annual budgeting process. Each ASALH committee or cluster (if applicable) is responsible for planning their estimated procurement needs for each year and communicating the information to the Executive Director and Audit and Finance Committee for consideration of inclusion in the annual budget.

### Controls on Procurement

Goods and services will only be procured within approved budgets except in cases of emergencies, which has to be approved by the Executive Director and/or Audit and Finance Committee.

### Vendor and Contractor Selection

ASALH will carefully select its vendors and contractors to ensure that the organization is receiving the best possible prices and quality available. ASALH will make a good-faith effort to identify, solicit, and utilize minority and women-owned businesses whenever possible.

### Contractor List

ASALH will maintain a list of current contractors. The contractor list will be updated accordingly and presented to the Audit and Finance Committee as a part of the annual budgeting process. The contractor list will specify the estimated annual amount for each contractor (or expense category if a contractor has not been identified) that is expected to exceed \$5,000 for the year. The contractor list will also identify related funding sources (i.e., grants, donations, etc.), if applicable, and the business name and/owner or representative.

The contractor list will be adjusted periodically to include all contractors that exceed the \$5,000 threshold during the year that were not anticipated to do so during the budgeting process.

### Use of Contractors

ASALH will seek contractors' services for jobs that require technical expertise that ASALH doesn't currently have in-house and jobs that do not require more than 6 months of continuous engagement or full-time staff.

The decision to hire the services of a contractor will be made by the Executive Director in consultation with the Audit and Finance Committee.

As a need is identified, the Executive Director will send an invitation to specific consultant(s) requesting a proposal for services. All request for proposals must contain a specific "reply by" date and a clear description of the services sought. The Executive Director will review and discuss the proposals received with the Audit and Finance Committee (if necessary), prior to making a final selection. All contractors must sign an agreement detailing the terms of the engagement prior to the commencement of the assignment.

### Contractor Payments

ASALH will process all contractor payments based on the approved contractual terms.

All contractors are required to submit an invoice to the Executive Director for review and approval prior to payment. The Executive Director (or designated staff) will send the approved invoice and applicable support to the accountant to process the payments. In accordance with ASALH's financial policy, the Executive Director is authorized to procure and process payments up to \$5,000. All payments over \$5,000 require two signatures<sup>1</sup> (i.e., the Executive Director plus President or Treasurer).

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<sup>1</sup> *Recurring payments over \$5,000 that are covered by a long-term agreement (i.e., an agreement greater than six months) AND has been approved by the Audit and Finance Committee, do not require a double signature for each monthly payment.*

## PART II

### Federal Grants Procurement Policy

ASALH periodically receives grants to perform services for, or in conjunction with, Federal government agencies. The Federal government provides rules for how grantees must spend, track, and report on Federal funds. This policy has been developed in accordance with the federal guidelines in 2 CFR Part 200 titled *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) to clarify Federal requirements and procedures, as well as ensure that materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. All procurements made by ASALH involving the expenditure of Federal funds will be made in accordance with the following procurement guidelines.

#### Responsibilities

As a Federal grant recipient, ASALH is the responsible authority for administering the procurement function and the settlement of all contractual and administrative issues related to procurements for the purchase of goods and services in support of Federal grants and other awarding instruments. These responsibilities include source evaluation, types of contracts, disputes, claims and other contractual issues. Matters concerning violation of statute are referred to the Federal, State, or local authority that has proper jurisdiction.

When using Federal grant funds, ASALH will follow applicable state statutes and rules and local policies only to the extent that those policies do not conflict with the Uniform Guidance.

#### Standards of Conduct

No ASALH employee, officer, Executive Council (EC) member or agent may participate in the selection, award, or administration of a contract supported by a Federal award 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 specified, has a financial or other interest in, or will receive a tangible personal benefit from, a firm considered for a contract.

ASALH's officers, EC members, employees, and agents must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

#### Requirements for Grants

##### **Adequate Documentation**

ASALH will maintain adequate documentation to demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. The records must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions. The documentation must also be sufficient to trace the funds to a level of

expenditures adequate to establish that such funds were used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

Examples of adequate documentation include records that show:

- How the funds were spent;
- When the spending occurred;
- Who made the purchase;
- Who authorized the spending; and
- When the authorization took place.

#### **Unnecessary Purchases**

ASALH will review proposed procurements to avoid purchasing unnecessary or duplicative equipment, supplies, and services.

#### **Economical Purchases**

ASALH will consider consolidating or splitting up procurements to obtain a more economical purchases. Where appropriate, an analysis of lease or purchase alternatives will be made to determine which would be the most economical approach.

#### **Contractor Evaluation**

ASALH will only assign contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, financial and technical resources, and accessibility to other necessary resources.

#### **Excess and Surplus Property**

If procuring equipment or supplies, ASALH will use Federal excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

#### **Shared Services**

ASALH will look for state or local intergovernmental agreements or inter-entity agreements, where appropriate, for the procurement or use of common or shared equipment, supplies, and services to foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government. However, ASALH will get prior approval from the awarding agency prior to using one of those agreements or making changes to a program or project.

#### **Value Engineering**

Value engineering is a systematic and technical analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. ASALH will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

#### **Prohibited Procurements**

##### **Conflict of Interest**

A conflict of interest arises when an employee, officer, or agent, any member of their immediate family, their partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

When a real or apparent conflict of interest occurs no ASALH employee, officer, EC member or agent may participate in the selection, award, or administration of a contract supported by a Federal award.

ASALH officers, EC members, employees, and agents of the organization may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

All real or apparent conflicts of interest must be disclosed to the Audit and Finance Committee. Failure to comply with these standards can result in disciplinary action, including termination of employment.

ASALH will disclose in writing any conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

**Suspension and Debarment**

ASALH will check for suspended or debarred parties prior to awarding work for all covered transactions. Common types of covered transactions include:

- All non-procurement contracts such as subawards;
- All procurement contracts requiring the consent of an official of a Federal agency;
- Other procurement contracts for goods or services expected to equal or exceed \$25,000; and
- A principal person in a covered transaction, such as a principal investigator.

ASALH will check for suspended or debarred contractors by:

- Checking the Excluded Parties List in the System for Award Management (SAM); or
- Collecting a certification from the contractor; or
- Adding a clause or condition to the contractor’s agreement.

ASALH will also maintain adequate records of which contractors were checked, when they were checked, and the results of the search.

**Federal Procurement Methods**

ASALH must use one of the following five methods for the procurement of goods and services with Federal funds.

Method	Aggregate Dollar Amount	Note 1	Note 2
1. Micro-Purchase	Up to \$10,000	No quotations required if the price is reasonable.	To extent practicable distribute equitably among qualified suppliers.

2. Small Purchase (Simplified Acquisition Threshold)	Up to \$250,000	Rate quotations from an adequate number of qualified sources.	No cost or price analysis required
3. Sealed Bid	> \$250,000	Primarily construction projects-Firm fixed price contract.	Price is a major factor- formal process for bidding.
4. Competitive Proposals	> \$250,000	Fixed price or cost reimbursement.	RFP with evaluation methods for an adequate number of qualified sources.
5. Sole Source	Available for procurements of any dollar amount.	No competition/Must be authorized by agency (or Pass- through entity).	Unique or public emergency.

**Micro-Purchase**

The micro-purchase method is for Federal government acquisition of goods or services when the aggregate dollar amount does not exceed the micro-purchase threshold (currently \$10,000). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if ASALH considers the price to be reasonable.

**Small Purchase**

The small purchase method is for those relatively simple and informal procurements for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (currently \$250,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

**Sealed Bid**

The sealed bid method is for bids that are publicly solicited. A firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction if the conditions below apply.

- (1) For sealed bidding to be feasible, the following conditions should be present:
  - (a) A complete, adequate, and realistic specification or purchase description is available;
  - (b) Two or more responsible bidders are willing and able to compete effectively for the business; and
  - (c) The procurement lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on the basis of price.
- (2) If sealed bids are used, the following requirements apply:
  - (a) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. The invitation for bids must be publicly advertised for local and tribal governments;

- (b) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (c) Bids will be opened at the time and place prescribed in the invitation for bids. The bids must be opened publicly for local and tribal governments;
- (d) 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
- (e) Any or all bids may be rejected if there is a sound documented reason.

### **Competitive Procurement**

The competitive procurement method is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practicable;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) ASALH must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) ASALH 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, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services even when A/E firms are a potential source to perform the proposed effort.

### **Sole Source**

ASALH recognizes sole source procurements are a form of noncompetitive procurement and as such additional steps are required to ensure that the procurement will be allowable to charge the Federal award. Sole source procurements require justification process that meet a narrow set of guidelines and authorization from the Federal agency.

The sole source (noncompetitive proposals) procurement method is a solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;

- (2) The public need or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from ASALH; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

## Contracts

### Contract Types

#### Firm Fixed Price Contract

The firm fixed price contract is used when the total effort or cost can be estimated with sufficient certainty. As the name implies, the price is fixed in the contract, and the risk of cost overruns are borne by the contractor and not ASALH. This procurement type also creates a built-in incentive for the contractor to be efficient in the use of labor and materials. It is appropriate to use a firm fixed price contract when you can determine a fair and reasonable cost for the work before the work begins.

#### Time and Materials Contract

ASALH may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract mean a contract whose cost to ASALH is the sum of:

- (a) The actual cost of materials; and
- (b) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, ASALH must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

#### Prohibited Contracts

ASALH may not use the “cost plus a percentage of cost” or “percentage of construction cost” methods of contracting as they are explicitly prohibited for procurements supporting Federal awards.

#### Use of Consultants

ASALH may use consultants (i.e., professional and consultant services provided by persons who are members of a particular profession or possess a special skill, and who are not officers or employees) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal government.

When determining the allowability of consultants costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:



- (1) The nature and scope of the service provided in relation to the service required.
- (2) The necessity of contracting for the service, considering ASALH's capability in the particular area.
- (3) The past pattern of such costs, particularly in the years before Federal awards.
- (4) The impact of Federal awards on ASALH's business (i.e., what new problems have arisen).
- (5) Whether the proportion of Federal work to ASALH's total business is favorable to ASALH incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.
- (6) Whether the service can be performed more economically by direct employment rather than contracting.
- (7) The qualifications of the individual or entity rendering the service and the customary fees charged, especially on non-Federally funded activities.
- (8) Adequacy of the contractual agreement for the service (e.g., description of the service, an estimate of the time required, the rate of compensation, and termination provisions).

In addition to the factors listed above, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

#### **Contract Administration**

ASALH will maintain a system for contract administration to ensure that contractor performance and payments are monitored during the course of the contract. ASALH will evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

#### **Bonding**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept ASALH's bonding policy and requirements provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements are as follows:

- (a) A bid guarantee from each bidder equivalent to five percent 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.

#### **Cost and Price Analysis**

ASALH must perform a cost or price analysis in connection with every procurement action more than the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation,

but as a starting point, ASALH must make independent estimates before receiving bids or proposals.

ASALH 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.

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 would be allowable for the non-Federal entity under 2 CFR Part 200 Subpart E—Cost Principles.

#### **Protests, Disputes, and Claims**

ASALH alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve ASALH of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of ASALH unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

ASALH 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. This review generally will take place prior to the time the

specification is incorporated into a solicitation document. However, if ASALH desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

ASALH 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, when:

- (1) ASALH's procurement procedures or operations fail to comply with the procurement standards in this part;
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold 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 Simplified Acquisition Threshold, specifies a "brand name" product;
- (4) The proposed contract is more than the Simplified Acquisition Threshold 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 Simplified Acquisition Threshold.

ASALH is exempt from the pre-procurement review of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the procurement standards in 2 CFR Part 200.

ASALH may request that its procurement system is reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

ASALH may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from ASALH that it is complying with these standards. ASALH must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

### **Contract Provisions**

All ASALH federally grant funded contracts must include all applicable provisions described in Appendix II to Part 200 – *Contract Provisions for non-Federal Entity Contracts Under Federal Awards*. These can be found at the Electronic Code of Federal Regulations website – [www.ecfr.gov](http://www.ecfr.gov).

All contracts awarded by ASALH to subcontractors and involving a grant-funded purchase of goods or services, including small purchases, must also contain the following contract clauses:

- Provisions that allow for administrative, contractual, or legal remedies where the contractor violates or breaches contract terms as well as remedial actions;

- Provisions addressing termination by ASALH, including manner of termination and basis for settlement;
- Provisions addressing termination of contract for default as well as circumstances beyond control of subrecipient;
- Provisions for bid guarantees, performance bonds, and payment bonds; and
- Provisions allowing access to subrecipient records by ASALH, Federal awarding agency, Comptroller General of the United States, and any other duly authorized representative.

### Competition

All ASALH procurement transactions must be conducted in a manner that provides, to the maximum extent practical, open and free competition. As such, ASALH should promote competitive bids where possible.

### **Affirmative Steps**

When soliciting bids for goods or services, ASALH will make a positive effort to use small businesses, minority-owned firms, and women's business enterprises (MWBES), to the fullest extent practicable. ASALH will take the following affirmative steps to ensure that this occurs:

- (1) Place qualified small businesses and MWBES on its solicitation lists;
- (2) Assure that small businesses and MWBES are solicited whenever they are potential sources;
- (3) Establish delivery schedules, where the requirement permits, which encourage participation by small businesses and MWBES;
- (4) Divide the total requirements of a contract into smaller tasks or quantities to permit maximum participation by small businesses and MWBES;
- (5) Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency (MBDA) in the solicitation of and utilization of small businesses and MWBES, as appropriate; and
- (6) Require prime contractors, if subcontracts are allowed, to take the affirmative steps listed above.

### **Geographic Preferences**

ASALH prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. However, geographic location may be a selection criterion when awarding contracts for architectural or engineering (A/E) services, provided that using such criteria leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the work.

### **Restricting Competition**

ASALH prohibits the following actions considered to be restrictive of competition with procurements funded with Federal grants:

- (1) Allowing contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals to compete for such procurements;
- (2) Placing unreasonable requirements on firms for them to qualify to do business;
- (3) Permitting noncompetitive pricing practices between firms or between affiliated companies;
- (4) Requiring unnecessary experience or excessive bonding;
- (5) Awarding noncompetitive contracts to consultants that are on retainer contracts;
- (6) Permitting organizational conflicts of interest;
- (7) Specifying a “brand name” product without permitting “an equal” product to be offered, and without describing the performance requirements that must be met for a product to qualify as an equal; and
- (8) Acting arbitrarily in awarding contracts (i.e., inconsistent, unfair, and non-transparent).

Furthermore, ASALH must 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. Also, potential bidders must not be precluded from qualifying during the solicitation period.

#### **Solicitation Requirements**

When soliciting for competitive bids for good and services, ASALH must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of the procurement. The specific features of the named brand which must be met by offers must be clearly stated.
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

#### **Record Retention**

ASALH will maintain adequate records that detail the history of each procurement. These records must include, at least, records showing the rationale for (1) the method of procurement, (2) the selection of contract type, (3) contractor selection or rejection, and (4) the basis for the contract price.

All records will be maintained in accordance with ASALH’s Record Retention Policy, or at a minimum three years from the date of submission of the final expenditure report with the following exceptions:

- For records related to litigation, claims or audits started before the three-year period expires, ASALH must retain records until all actions have been resolved and final action related to the litigation, claims, or audits has been taken.
- For real property and equipment, records must be retained for three years from the date of final disposition of the property.
- When the Federal awarding agency maintains the records, the three-year retention requirement does not apply to ASALH.
- For program income received after the period of performance, the Federal award recipient must retain such records for three years after the end of the Federal award recipient's fiscal year during which the program income was earned. For example, if a Federal award recipient concludes its period of performance in 2015, but earns program income in 2017, then it must maintain those program income records for three years after the end of 2017.