



EFFICIENCY MAINE TRUST
Federal Funds Procurement Policy
(Draft for Board Review)

1.0 PURPOSE

This policy document describes the process through which Efficiency Maine Trust, a quasi-state agency of the State of Maine (the “Trust” or “EMT”), will procure vendor or contractor services or equipment using federal funds in support of the Trust’s performance of federally funded projects or programs.

This policy document is intended to ensure that EMT’s procurement procedures using federal funds conform to the applicable federal procurement standards set forth in 2 C.F.R §§200.317-327, and Appendix II to Part 200. Additional federal agency requirements may apply pursuant to the terms of a specific federal award. EMT staff shall verify whether additional requirements apply prior to making procurements and shall document the determination and any additional or alternate requirements used in the procurement summary.

In accordance with 2 CFR 200.317, the Trust, as a quasi-state agency, will follow the same policies and procedures it uses for procurement with non-federal funds, as articulated in Chapter 1 of the Trust’s rules (Contracting Process for Service Providers and Grant Recipients) and the Procurement Policy, and will supplement these policies and procedures with the applicable federal procurement standards where necessary when using federal funds.¹ To the extent there is a conflict between the Trust’s policies and procedures for procurement with non-federal funds and the required procurement policies for state entities using federal funds as set forth in 2 CFR 200.317, the required provisions of the federal regulations shall control.

This policy document is intended to apply to procurement transactions with “contractors” through “contracts” as such terms are defined in 2 CFR 200.1. EMT shall make determinations of “contractor” status in accordance with the standards set forth in 2 CFR 200.331 *Subrecipient and Contractor Determinations*.

These policies and procedures have been developed with reference to the following federal regulations:

Code of Federal Regulations (CFR) Title 2, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

- 2 CFR §§200.317-327, Procurement Standards (and Appendix II to Part 200) as applicable to State entities
- 2 CFR §200.112, Conflict of Interest
- 2 CFR §200.113, Mandatory Disclosures

¹ EMT Procurement Policy (March 28, 2018)
{P2359309.3}

2.0 DEFINITIONS

For purposes of this policy document, and with reference to 2 CFR § 200.1, the following terms have the following meanings:

Contract – A legal instrument by which EMT, as a recipient or subrecipient or beneficiary of a federal award, conducts procurement transactions for products or services needed by EMT to carry out the federal project or program. The term contract includes all such agreements, whether or not characterized as a “contract” such as an “agreement,” “purchase order,” “license agreement,” “support agreement,” or other similar term. A contract is for the purpose of obtaining goods and services for EMT’s own use and creates a procurement relationship.

Contractor – An entity that receives a contract from EMT. Characteristics indicative of a procurement relationship between EMT and a contractor are when the contractor provides goods and services within normal business operations, provides similar goods or services to other purchasers, normally operates in a competitive environment, provides goods or services that are ancillary to EMT’s performance of the federal project or program, and is not subject to direct compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons. *Note: It is common practice to refer to various providers of trade services who are selected and paid directly by consumers as “contractors.” In most instances, these “contractors” (e.g. electricians, plumbers, installers) have entered into a contract with a property owner, and not with the Trust, and should not be confused with the definition of contractor as used in this policy.*

Equipment - Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by EMT for financial statement purposes, or \$10,000.

Micro-Purchase - A micro-purchase is an individual procurement transaction for supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold set by the Federal Acquisition Regulation (FAR), which is currently \$10,000. Subject to the provision of 2 CFR 200.320, EMT may increase and self-certify the micro-purchase threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the applicable federal agency and auditors as required by applicable regulations. Micro-purchases may be awarded without soliciting competitive price or rate quotations if EMT considers the price reasonable based on research, experience, purchase history, or other information; and maintains documents to support its conclusion.

Pass-through Entity – A non-federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Simplified Acquisition - Where the aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold set by the FAR, which is currently \$250,000, simplified acquisition procedures may be used.

Small Purchase – means those procurement transactions under a federal award that do not exceed the simplified acquisition threshold and which may allow for informal procurement methods (see micro-purchases and simplified acquisitions)

Subaward – An award provided by a pass-through entity to a subrecipient for the subrecipient to

contribute to the goals and objectives of the project by carrying out part of a federal award received by the pass-through entity. It does not include payments to a contractor, beneficiary, or participant.

Subrecipient – A non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program. The term “subrecipient” does not include a beneficiary or program participant.

Supplies – All tangible personal property other than those described in the “equipment” definition. A computing device is a supply if the acquisition cost is below the lesser of the capitalization level established by EMT for financial statement purposes or \$10,000, regardless of the length of its useful life.

3.0 GENERAL PROCUREMENT STANDARDS

- a. EMT will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- b. EMT will observe the conflict of interest provisions of the Efficiency Maine Trust Act and its conflict of interest policies and standards of conduct governing the performance of its employees engaged in the selection and award, of contracts.² No trustee, officer, employee, or agent of EMT shall participate in the selection of an award that will lead to a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, or agent or, any member of their immediate family, or any organization that employs, or is about to employ, any such person above has a financial or other interest in or stands to receive a tangible personal benefit from an entity considered for a contract.

EMT trustees, officers, employees, or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts. EMT may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

- c. EMT will award contracts only to contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as record of past performance, relevant experience, financial and technical resources, and public record of contractor integrity, public policy compliance, and proper classification of employees.
- d. EMT will maintain records sufficient to detail the history of procurement transactions and comply with the recordkeeping requirements in the Trust’s *Records Retention Policy*.³
- e. EMT may use time and material-type contracts on federal projects or programs only after a determination that no other contract is suitable in the circumstance, and if the contract includes a ceiling price that the contractor exceeds at its own risk.

² *Efficiency Maine Trust Personnel Manual for Non-State Employees* (October 17, 2019); *Efficiency Maine Trust Review Team Confidentiality and Conflict of Interest Statement* (February 1, 2023)

³ *Efficiency Maine Trust Records Retention Policy* (February 28, 2024)

Time and material type contract means a contract whose cost to a non-federal entity is the sum of: the actual cost of materials, and 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, EMT must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost control.

- f. EMT will be 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, protest, disputes, and claims. Violations of law will be referred to the local, State or Federal authority having proper jurisdiction.
- g. Consistent with 2 CFR 200.113, EMT will promptly disclose whenever, in connection with the federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).
- h. EMT may use informal procurement methods for small purchases.
 - i. Micro-Purchases. A micro-purchase is an individual procurement transaction for supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold set by the FAR, which is currently \$10,000. Subject to the provision of 2 CFR 200.320, EMT may increase and self-certify the micro-purchase threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the applicable federal agency and auditors as required by applicable regulations. Micro-purchases may be awarded without soliciting competitive price or rate quotations if EMT considers the price reasonable based on research, experience, purchase history, or other information; and maintains documents to support its conclusion.
 - ii. Simplified Acquisitions. Where the aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold set by the FAR, which is currently \$250,000, simplified acquisition procedures may be used. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Unless specified by the applicable federal agency, EMT may exercise judgment in determining what number is adequate. EMT will determine an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures, which may be lower than, but must not exceed, the threshold established in the FAR.
- i. Competitive Procurement. The trust will use competitive procurement methods as set forth in its Procurement Policy when the value of the procurement transaction under a federal award exceeds the simplified acquisition threshold. As a general matter, competitive procurements will be conducted in accordance with the following standards:
 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 practical;

2. Proposals must be solicited from as many qualified sources as practical;
3. EMT will evaluate proposals received according to the published evaluation factors; and
4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

j. Procurement by Noncompetitive Proposals. In certain circumstances, procurement by noncompetitive proposals may be used. The noncompetitive procurement method may only be used if one of the following circumstances applies:

1. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold;
2. The procurement transaction can only be fulfilled by a single source;
3. The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
4. The Trust requests in writing to use a noncompetitive procurement method, and the federal agency or pass-through entity provides written approval; or
5. After soliciting several sources, competition is determined inadequate.

k. Contracting with Small Businesses, Minority Businesses, Women's Business Enterprises, Veteran-owned Businesses, and Labor Surplus Area Firms. When possible, EMT should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below. Such consideration means:

- i. These business types are included on solicitation lists;
- ii. These business types are solicited whenever they are deemed eligible as potential sources;
- iii. Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- iv. Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
- v. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring a contractor under a Federal award to apply this section to subcontracts.

l. Domestic Preferences for Procurements. Subject to any federal program-specific exceptions, EMT, should, to the greatest extent practicable and consistent with law, 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). The requirements of this section must be included in all subawards, contracts, and purchase orders

under federal awards.

For purposes of this procurement standard, “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; and “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- m. Procurement of Recovered Materials. (a) To the extent applicable to a particular procurement, EMT will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, 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; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) EMT should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.
- n. Contract Provisions. EMT’s procurement contracts will include the provisions contained in 2 CFR Part 200, Appendix II – *Contract Provisions for Non-Federal Entity Contracts Under Federal Awards* as may be applicable to the specific procurement and contractor. In addition to other provisions required by the applicable federal agency or EMT, all contracts made by EMT under the federal award will contain provisions covering the following, as applicable:
 - (A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) 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.
 - (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
 - (C) 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.”

- (D) 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 non-Federal entities 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”). 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. The non-Federal entity 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. The non-Federal entity 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity 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.
- (F) 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.
- (G) 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).

- (H) 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.
- (I) 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.
- (J) Procurement of recovered materials. *See* 2 CFR § 200.323
- (K) Prohibition on certain telecommunications and video surveillance equipment or services. *See* 2 CFR § 200.216
- (L) Domestic preferences for procurements. *See* 2 CFR § 200.322

4.0 RECORD RETENTION; ACCESS TO RECORDS

- a. EMT will follow its *Efficiency Maine Trust Records Retention Policy*. At a minimum, EMT will retain all federal award records for three (3) years from the date of submission of its final financial report. For federal awards that are renewed quarterly or annually, EMT will retain records for three (3) years from the date of submission of its quarterly or annual financial report, respectively. Records to be retained include but are not limited to, financial records, supporting documentation, and statistical records.
- b. When practicable, EMT will collect, transmit, and store federal award information in open and machine-readable formats.
- c. EMT recognizes that the awarding federal agency or pass-through entity, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives have the right of access to any records of pertinent to the federal award to perform audits, execute site visits, or for any other official use. This right also includes timely and reasonable access to EMT's personnel for the purpose of interview and discussion related to such documents or the federal award in general.

